S. Hrg. 104–391

S. 4 AND S. 14, LINE-ITEM VETO

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

FEBRUARY 23, 1995

Printed for the use of the Committee on Governmental Affairs

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S. 4 AND S. 14, LINE-ITEM VETO

THURSDAY, FEBRUARY 23, 1995

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:00 a.m., in room SD–342, Dirksen Senate Office Building, Hon. William V. Roth, Jr., Chairman of the Committee, presiding.

Present: Senators Roth, Stevens, McCain, Glenn, Levin, Pryor, Lieberman, and Dorgan.

OPENING STATEMENT OF CHAIRMAN ROTH

Chairman ROTH. The Committee will please be in order.

Today we will hear testimony on the line-item veto legislation. This legislation is embodied in two Senate bills with differing procedures. S. 4 would provide for enhanced rescission while S. 14 would set up a procedure for expedited consideration of a proposed rescission. This is a very important issue that President Clinton has repeatedly endorsed. In fact, in our hearing on this issue last month, Dr. Alice Rivlin, Director of OMB, asked that the Congress provide the "strongest possible line-item veto power to the President." I agree with Dr. Rivlin's statement. Congress should act to give the President the strongest possible version of the line-item veto powers. On February 6, 1995, the House of Representatives did just that. They passed H.R. 2 overwhelmingly with a bipartisan vote of 294 to 139. H.R. 2 is almost identical to S. 4 in the Senate. Both bills would provide for enhanced rescission powers.

It was my intention to hold a markup this morning on both S. 4 and S. 14. However, the minority had requested an additional hearing on this matter. Accordingly, we are meeting today for that purpose. It is my further intention to report both bills out of the Governmental Affairs Committee without recommendation 1 week from today on March 2, 1995. This is what the Budget Committee did on February 14th. I understand that the Budget Committee will file their reports on both S. 4 and S. 14 tomorrow. So ample time will be available for review of those documents before our scheduled markup. Furthermore, both S. 4 and S. 14 as amended by the Budget Committee were available to our Committee members last Thursday, February 16th. A computer message was sent to all offices on February 16th, notifying each Senator of the availability of these bills as amended.

A hearing was held last month on the line-item veto on January 12th by this Committee along with the House Committee on Government Reform and Oversight. At the hearing, testimony was

heard from Senators McCain and Coats, Congressmen Gerald Solomon, Jack Quinn, Mark Neumann, and Michael Castle. Also testifying at this hearing was Governor Weld of Massachusetts outlining his experience with line-item veto authority in his State. Expert testimony was also heard from Dr. Alice Rivlin regarding the Clinton administration's view on the line-item veto; Dr. Reischauer of the Congressional Budget Office; Judge Gilbert Merritt, Chief Judge of the Sixth Circuit and Chairman of the Executive Committee of the Judicial Conference; Joseph Winkelmann of Citizens Against Government Waste; David Keating of the National Taxpayers Union; and Dr. Norman Ornstein of the American Enterprise Institute.

I will include, if there is no objection, my full statement as if read.

[The prepared statement of Chairman Roth follows:]

PREPARED STATEMENT OF CHAIRMAN ROTH

Good Morning. Today we will hear testimony on the line item veto legislation. This legislation is embodied in two Senate bills with differing procedures, S. 4 would provide for enhanced rescission, while S. 14 would set up a procedure for expedited consideration of a proposed rescission. This is a very important issue that President Clinton has repeatedly endorsed. In fact, in our hearing on this issue last month, Dr. Alice Rivlin, Director of the Office of Management and Budget asked that the Congress provide the strongest possible line item veto power to the President. I agree with Dr. Rivlin's statement. Congress should act to give the President the strongest possible version of the line item veto powers. On February 6, 1995 the House of Representatives did just that. They passed H.R. 2 overwhelmingly with a bipartisan vote of 294 to 139. H.R. 2 is almost identical to S. 4 in the Senate. Both bills would provide for enhanced rescission powers.

It was my intention to hold a mark-up this morning on both S. 4 and S. 14, however, the minority had requested an additional hearing on this matter. Accordingly, we are meeting today at the request of all seven Democratic Senators on this Committee. It is my intention, however to report both bills out of the Governmental Affairs Committee without recommendation 1 week from today on March 2, 1994. This is identical to what the Budget Committee did on February 14, 1995. I understand that the Budget Committee will file their reports on both S. 4 and S. 14 tomorrow, so ample time will be available for review of their documents before our scheduled markup. Further, both S. 4 and S. 14 as amended by the Budget Committee were available to our Committee Members last Thursday, February 16. A computer message was sent to all offices on February 16, notifying each Senator of the availability of these bills as amended.

A hearing was held just last month on the line item veto on January 12, 1995, by this Committee along with the House Committee on Government Reform and Oversight. At the hearing, testimony was heard from Senators McCain and Coats, Congressmen Gerald Solomon, Jack Quinn, Mark Neumann, and Michael Castle. Also testifying at this hearing was Governor William Weld of Massachusetts outlining his experience with line item veto authority in his State. Expert testimony was also heard from Dr. Alice Rivlin regarding the Clinton Administration's view on the line item veto; Dr. Robert Reischauer of the Congressional Budget Office; Judge Gilbert S. Merritt, Chief Judge of the Sixth Circuit and Chairman of the Executive Committee of the Judicial Conference; Joseph Winkelmann of Citizens Against Government Waste; David Keating of the National Taxpayers Union; and Dr. Norman Ornstein of the American Enterprise Institute. In addition to our January 12 hearing in this Committee, the Senate Budget Committee held a hearing on the line item veto on January 18, 1995. Testimony was heard from Senators McCain, Coats, Bradley, as well as Dr. Alice Rivlin. Further, the Senate Judiciary Subcommittee on the Constitution also held a hearing on the line item veto issue on January 24.

As just mentioned, this Committee will move to mark up two line item veto bills. Senate Bill 4, the Enhanced Rescission bill provides enhanced rescission authority to the President to veto specific appropriation provisions. The President would have 20 days to veto a specific item in an appropriations bills. The Congress would then have 20 days to approve a disapproval resolution of the rescinded funds. This dis-

approval resolution would then be sent to the President. Should the President veto this resolution, it would then have to be overridden by the Congress.

The Budget Committee adopted several amendments to S. 4.

Senator Domenici offered an amendment to sunset S. 4 in 2002. It was approved by voice vote.

Senator Conrad offered an amendment to ensure that should the President rescind appropriated funds, the discretionary caps will be lowered to ensure that the rescinded monies would go to reduce the deficit and not be available for future spending. It was approved by voice vote.

Also next Thursday this Committee will mark up Senate Bill 14, Expedited Rescission. This bill provides expedited rescission authority for the Congress to consider a proposed Presidential rescission of specific spending including appropriations, entitlement and tax expenditures. The President would have 20 days to propose a rescission. After a Presidential proposed rescission, Congress would have 10 days to approve or disapprove of the President's proposal by a simple majority. Both the House and the Senate must approve of the proposed rescission in order for the funds to be rescinded.

The Budget Committee adopted several amendments to S. 14.

Senator Domenici offered a substitute to his original bill which provides for an expedited rescission process for appropriations only. The substitute also included a sunset of 2002. It was approved by a voice vote.

Senator Exon offered an amendment to put targeted tax benefits back into the Domenici substitute. It was adopted by a vote of 12–10.

Senator Nickles offered an amendment including targeted tax benefits that would allow the President to veto any targeted tax provision affecting fewer than 100 people. This is similar to the House-passed provision on tax expenditures. It was approved by a vote of 12–10.

Chairman ROTH. I call on my distinguished colleague and friend, Senator Glenn.

OPENING STATEMENT OF SENATOR GLENN

Senator GLENN. Thank you, Mr. Chairman. I have a longer statement I would like to have submitted for the record and will make shorter remarks here this morning.

I am very pleased you are holding this hearing. As you noted, it was at our request. We thought this should not be rushed through, because I think this is one of the most significant legislative proposals our Committee will consider probably this year or in many years. This affects the very balance of power between the fundamental balance of powers laid out in the Constitution. And I think it deserves our most careful consideration. It is not an issue we should try to race through Committee and onto the floor, and I look forward to a debate through which we can consider some improvements to the legislation before us and make some thoughtful recommendations to the full Senate.

As the Chairman has noted, the plan is to vote this legislation out without recommendation. I don't agree with that procedure, but that is the way it goes. And as we were told, there are eight votes that we cannot overcome that will vote en bloc on the Committee, and that will be the way it goes.

I know that the leadership has requested this legislation get to the floor soon, but I think we only delay things further when we take this kind of action with the Committee, because it just means there is going to be more delay once we get to the Senate floor on things that we probably could have worked out in the Committee.

I must register my objection to voting bills out without recommendation. That is not the way we normally do things. I realize that is the way things are going to go, but I think that is the wrong way to go. I don't recall we have ever done this in the past on Com-

mittee, but leadership has requested it, and so I guess that this is the way it is going to be.

I oppose a significant alteration in congressional spending power because of possible Executive abuse. I feel there is real room for improvement to our current budget process in this area. I believe we can craft a proposal that protects the balance of powers laid out in the Constitution while still allowing the President greater latitude in eliminating unnecessary spending.

For me, the bottom line is accountability. Accountability. A line-item veto could serve to make both the President and Members of Congress accountable for each dollar of taxpayer money that they spend.

Now, I have looked at both bills, and while S. 4 is certainly well intentioned, I am afraid that it simply tips the balance of powers too far over in favor of the Executive. I do believe that S. 14, as originally offered by Senators Domenici and Exon, was headed in the right direction. Unfortunately, that bill was watered down in the Budget Committee, so it now only allows for a line-item veto of tax expenditures benefiting 100 or fewer taxpayers. I don't know how this magic number cutoff was arrived at, but, anyway, that is what is in the bill now.

The language of the original Domenici bill was modeled after the famous Contract With America. Now, the proposal in the Contract With America States, and I quote—and this is Mr. Gingrich's own statement: "The President could strike any appropriation or targeted tax provision that provides special treatment to a particular or limited class of taxpayers in any bill." There is no mention of 100 or fewer taxpayers that Republican Senators now appear to support, and you won't hear me saying this often, but I agree with Newt and his contract on this one.

If we are serious about the line-item veto—and we had better be—it should apply to all targeted tax expenditures, period. Why put in arbitrary caps? I am glad that Senator Bradley is here with us today because he has studied this particular area for a long time, and has focused congressional debate on this side of the ledger sheet.

So, again, Mr. Chairman, I want to thank you for holding this hearing. I am sorry that we are going to vote this out without recommendation at our markup. But I am looking forward to a constructive discussion today.

Thank you.

[The prepared statement of Senator Glenn follows:]

PREPARED STATEMENT OF SENATOR GLENN

Thank you Chairman Roth.

I want to thank you for holding this hearing on what I consider to be one of the most significant legislative proposals that our Committee will consider this year.

For well over a Century, Congress has debated—and rejected—proposals to provide the President with line-item veto authority. The concept sounds pretty good. There is nothing more appealing to me than cutting waste from the budget. But we also must recognize that we're also talking about a dramatic shift in power from the Legislative to the Executive branch.

The congressional spending power is not something that our Founding Fathers took lightly. It is fundamental to the delicate balance set forth in the Constitution. As James Madison said, "The power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any Constitution can arm the immediate representatives of the people for obtaining redress of every grievance and

for carrying into effect every just and salutary measure." In enacting all of the major budget reform legislation of this Century—the Budget and Accounting Act of 1921, the Impoundment and Control Act of 1974, and even Gramm-Rudman-Hollings—Congress has been careful not to arm the Executive with superior powers over the purse.

That is because a significant shift in spending power raises the very real possibility of abuse. Abuse by a President who uses the line-item veto to punish members of Congress with retribution for their votes, or a President who refrains from using that power to reward members for votes they cast. I must admit this prospect gives me great pause.

However, I do feel that there is real room for improvement to our current budget process. All too often, the Congress sends appropriations bills to the President laden with wasteful pet projects that drain the budget and the taxpayers pockets.

That's why I think it's time to take a hard look at some form of line-item veto. But I believe we need to craft such a proposal in a way that protects the balance of powers laid out in the Constitution while still allowing the President greater latitude in eliminating unnecessary spending.

Truth be known, the Congress has actually done pretty well in rescinding money already appropriated. Since the Budget Act of 1974, we've actually rescinded more than presidents have requested. Our priorities were different than the presidents most of the time, but we actually rescinded more. So we need to be honest in this debate. The line-item veto is no panacea for deficit reduction.

For me, the bottom line is ACCOUNTABILITY. A line-item veto could serve to make both the President and Members of Congress accountable for each dollar of the taxpayers money that they spend. And it's high time that we spent that money much more wisely. That's why I think our colleague, Senator McCain, is on the right track in fighting the appropriation of funds that have not been authorized.

I believe that S. 14—as originally offered by Senators Domenici and Exon—was headed in the right direction. However, that bill was watered down in the Budget Committee. Originally, it allowed for the line-item veto of all targeted tax expenditures—but has been modified to affect only targeted tax expenditures affecting 100 or fewer taxpayers.

If we are serious about the line-item veto, I think that it should apply to all targeted tax expenditures—period. I am glad that Senator Bradley is here with us today to present his views on this matter. He has studied this particular area for some time and has focused Congressional debate over this side of the ledger sheet.

Some may be surprised to learn that tax expenditures account for over $450 billion in tax benefits. What I find most remarkable is that once these programs are enacted, very few are ever again reviewed by Congress or the Executive. Once enacted, most of these programs are with us in perpetuity. According to GAO, about 85 percent of our current revenue losses are from tax expenditures enacted before 1950. Fifty percent of our revenue losses stem from tax expenditures enacted before 1920.

So the case can be made that it is even more important to arm the President with line-item veto power over tax expenditures than over regular appropriations which are reviewed annually. And if we merely allow a president to review tax breaks affecting 100 or fewer taxpayers, I think I can predict pretty accurately that tax lawyers all over town will be concocting schemes that apply to 101 taxpayers or more. Instead of being a deficit reduction tool, this legislation will become a tax lawyers' full employment bill.

These are some of the issues I want to address as we look at this important topic. I believe that our Committee has a real opportunity here to craft a Constitutionally responsible approach to cut waste out of the budget. I look forward to a serious debate over this issue and want to thank you Mr. Chairman for holding this hearing.

Chairman ROTH. Thank you.

Senator Pryor?

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. Thank you, Mr. Chairman. I am sorry I am late, and I am sorry I missed the opening statements. I look forward to our colleagues this morning testifying.

Mr. Chairman, I would like to ask consent that my full statement be placed in the record.

Chairman ROTH. Without objection.

Senator PRYOR. In a statement last month by Robert Reischauer, the Director of CBO, he testified that "enhanced rescission has the potential to increase the President's power even more than a constitutional amendment." I think that is an interesting statement. He also stated that "the power shift would not necessarily lead to less spending or to lower deficits."

I think this is something that I would enjoy getting into this morning a little bit later with some of our colleagues.

I appreciate very much your holding this hearing, and I guess I am concerned, like Senator Glenn, that we may be voting this out without recommendation. But having said that, I look forward to the hearing this morning.

Thank you, Mr. Chairman.

[The prepared statement of Senator Pryor follows:]

PREPARED STATEMENT OF SENATOR PRYOR

Mr Chairman, I want to thank you for holding this important hearing on these two pieces of legislation dealing with the line item veto. I would also like to welcome our witnesses who have taken the time to testify on these two bills, and I am anxious to hear their insights and opinions.

I, like some other members of the Committee, have some concerns about these two line item veto bills and the way they shift the balance of power from Congress to the President. Just last month, Robert Reischauer, the Director of the Congressional Budget Office testified that "enhanced rescission has the potential to increase the President's power even more than a constitutional amendment." He also said that "the power shift would not necessary lead to less spending or lower deficits."

These are powerful statements and we will certainly discuss them further today. We are all looking for ways to cut spending and lower the deficit. We should, however, make sure that in our haste to do so we are not surrendering much of our congressional power and responsibility to one man—the President. The Constitution specifically gives the power of the purse to Congress. By allowing the President to open up appropriations bills or possibly entitlement programs and use the line item veto would certainly change the entire appropriations process and cause partisan bickering that makes the last 2 months look calm.

I also have concerns regarding S. 14's potential to affect tax policy by allowing the President to line item veto "targeted tax benefits." Senator Roth and I are the only members of this committee that are also on the Finance Committee. I believe we should be aware of the effect this would have on the Finance Committee's ability to set tax policy. I look forward to hearing Senator Bradley's testimony on this subject.

I am very concerned by a provision in S. 4 that requires a 2/3rds supermajority to override the President's veto of a rescission disapproval bill. This means that one-third plus one of one House of Congress can block the over-ride. This is a pretty powerful provision for the minority. Some have said it will lead to the tyranny of the minority.

Mr. Chairman, I again thank you for holding this hearing. I look forward to working with you and the other members of the Committee on this important issue.

Chairman ROTH. Thank you, Senator Pryor.

I want to welcome both our friend and colleague, Bill Bradley. We are delighted to have you here. I would ask that your statements be limited to 10 minutes.

Senator Bradley?

TESTIMONY OF HON. BILL BRADLEY, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator BRADLEY. Thank you very much, Mr. Chairman. I guess if you were puzzling whether to report out S. 14 or S. 4, you could always go to S. 137 and report that out. But it is just an opening suggestion.

I really appreciate the chance to come before you today, and I look forward to working with the Committee in the coming weeks, both here, if you would like, or on the floor, to try to craft an effective line-item veto during this Congress.

Mr. Chairman, I think we begin with two obligations. The first is to change the way we do business, and the second is to cut Government spending. Reforms that have been bottled up for years in kind of partisan finger pointing need to be released and must become our first priorities. I think both the Congress and the White House must learn to say no.

For decades, Presidents of both parties have insisted that the deficit would be lower if they simply had the power to say no in the form of a line-item veto. In order to grant the President the power to say no, I introduced S. 137, the Tax Expenditure and Legislative Appropriations Line-Item Veto Act of 1995. I tried to get a shorter title, but I just couldn't get it any shorter than that, Mr. Chairman.

In sponsoring this legislation, I have urged our colleagues in both the Senate and House to pass the line-item veto that covers spending in both appropriations and in tax bills. Although I did not support the line-item veto when I initially joined the Senate, I watched for about 12 years as deficits quintupled, pork-barrel projects persisted in appropriations bills, and especially in tax bills, and our Presidents again and again denied responsibility for their role in the decisions that led to these devastating trends. Therefore, in 1992, I decided that it was time for me to switch my position on the line-item veto.

Rather than simply joining one of the appropriations line-item veto bills then in existence, I felt that we needed to be honest about the fact that for each example of unnecessary, special-interest, pork-barrel spending through the appropriations bills, there are similar examples of such spending buried in tax bills.

The Tax Code provides special exceptions from taxes that this year will total over $450 billion—far more than the entire Federal deficit. Over the next 5 years, mandatory spending will grow by 29 percent, tax expenditures will grow by 25 percent, and discretionary spending will grow at 4 percent.

Mr. Chairman, for every $2.4 billion earmarked in an appropriations bill to teach civilian marksmanship skills, there is a $50 million special provision allowing taxpayers to rent their homes for 2 weeks without having to report any income derived. That is an interesting story which I will be glad to answer in the question-and-answer period.

For every $150,000 appropriated for acoustical pest control studies in Oxford, Mississippi, there is a $12 million tax subsidy for production of lead, asbestos, and uranium. We provide this subsidy at the same time we are spending millions of dollars more to clean up these deadly poisons.

As a member of the Finance Committee—and I see Senator Pryor here as well, and he can speak to this, I am sure, with as much experience as I. But we see an endless stream of requests for preferential treatment through the Tax Code, including special depreciation schedules for the rental of tuxedos, an exemption from fuel

excise taxes for crop dusters, and tax credits for clean-fuel vehicles, among other things. And this goes on and on and on and on.

In singling out these pork-barrel projects, I do not mean to pass judgment, necessarily, on their merits. However, because many of these Tax Code provisions single out a narrow sub-class for benefit, the rest of us must pay more in taxes because that sub-class pays less in taxes. Therefore, I believe that whatever line-item veto bill we approve must authorize the President to veto wasteful spending not just in appropriations bills, but also in the Tax Code.

If the President had the power to excise special-interest spending but only in appropriations, we would simply find the special-interest lobbyists who work the appropriations process simply turning themselves into tax lobbyists and pushing for the same kind of spending through the Tax Code.

Mr. Chairman, spending is spending, whether it comes in the form of a Government check or in the form of a special exemption from the tax rates that apply to everybody else. Tax spending does not, as some pretend, simply allow people to keep more of what they have earned, and this is an important point. It gives those people in that sub-class a special exception from the rules that oblige everybody else to share in the responsibility of funding the National defense or protecting the young, the aged, and the infirm.

The only way to let everyone keep more of what they have earned is to minimize these tax expenditures along with appropriated spending, and the burden of the national debt so that we can bring down tax rates fairly on everybody. Not one group or another group, but all groups benefit when tax rates drop.

Reducing the deficit, Mr. Chairman, will require leadership, not gimmicks. In passing the line-item veto bill, we must demonstrate this same type of leadership.

Let me say, sadly, I note that the House-approved version of the line-item veto resorts to what I have described as "a gimmick." For example, by defining a targeted tax benefit to include only those loopholes that benefit "100 or fewer taxpayers," the House, I think, has forfeited any opportunity to address the impact that tax loopholes on the Nation's continuing budget crisis. I hope that the Senate will not forfeit this opportunity as well.

Now, Mr. Chairman, why? Well, as far as I am aware, no Federal spending agency—IRS, Treasury, whatever—keeps track of how many taxpayers benefit from an individual tax benefit or an individual tax expenditure. Although this may seem surprising, it is understandable, given that many tax expenditures consist of exclusions from income rather than simple deductions. As a result, information on the number of beneficiaries, frankly, is not readily available.

For example, health insurance premiums and pension contributions are not included in taxable wages. Although these are large and well-known examples, there are other examples of income exclusions for which the information would not readily be available. Witness the exclusion from income for renting your house for 2 weeks a year. If you rent your house for 2 weeks a year, you get the income, and it doesn't count. That is a special little provision in the code. It costs $50 million.

So, Mr. Chairman, I came down to say there is no easy way to determine how many taxpayers would benefit from a proposed tax expenditure; therefore, any effort to limit it to a certain number of people is destined to fail because there is insufficient information.

Mr. Chairman, the American people have, I think, no more patience for finger pointing or excuses. They can no longer tolerate a deficit that saps our economic strength while all of us point at each other that someone else who is really responsible and we didn't really have the power to cut spending. I think it is time to cut spending and cut spending both in the appropriations process and in tax expenditures, and to do it now.

One more last point. Just keep in mind these numbers. Mandatory spending is growing at 29 percent a year, tax expenditure spending is growing at 25 percent a year, and discretionary spending is growing at 4 percent a year.

Mr. Chairman, thank you very much.

Chairman ROTH. Thank you, Senator Bradley.

Mr. Blute, it is a pleasure to have you here today. We look forward to your remarks.

TESTIMONY OF HON. PETER BLUTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MASSACHUSETTS

Mr. BLUTE. Well, thank you very much, Mr. Chairman, and good morning. I thank you for this opportunity to testify before the Governmental Affairs Committee. It is my pleasure to be here today as the Senate moves forward on the road to giving the President a line-item veto authority. As you know, the House voted overwhelmingly to give the President line-item veto authority on February 6th by a vote of 294 to 134.

Let me share with you just a few thoughts on why I believe the margin was so great, because I believe it relates to exactly why we need a line-item veto.

We are all aware that proposals for a line-item veto have been kicking around Capitol Hill for decades now.

Two years ago in the House, the line-item veto lost by a mere 21 votes, last year by 13 votes, but this year it passed by 160 votes.

The reason, I think, is that Americans realize that the line-item veto is an important step in the direction of positive change and fiscal sanity. People from all 50 States have said to themselves, "My family has had to cut out some of the luxuries from our budget in order to pay the bills during lean times, so why shouldn't the Federal Government have to do the same thing?" And they sent that message loud and clear to their Representatives last November.

And they demanded action, not just lip service, which is why we brought it to the floor so quickly in the House, and why I hope that you in the Senate will continue to move expeditiously on this issue. What the American people want—and what we should give them—is the toughest budget-cutting tool possible. It is what President Clinton asked for.

Make no mistake about it. The real line-item veto is contained in Senator McCain's bill, S. 4, and we believe that is the way to go. This is almost the exact same legislation that we passed in the House, and I believe that the Senate should follow suit. Expedited

rescission is not the line-item veto. It is a watered-down solution that the House rejected and which I believe is not up to the job.

The only real line-item veto bill before the Senate is S. 4. S. 4 is the only real line-item veto bill because it would force Congress to disapprove the President's rescissions within a specified amount of days, and it is the only bill that requires a two-thirds vote to override the President.

Because of these provisions, S. 4 is the only way to prevent Congress from spending taxpayer dollars on pork projects inserted into bills in the dark of night or during conference—times when legislators know that a majority of Congress will never have the opportunity to take a separate vote to strike questionable items.

S. 14, on the other hand, would only force a vote in one House, meaning that if the other House chose not to act at all, the rescission would never happen and wasteful spending would continue unabated.

Let's face it, sometimes we in Congress can't help ourselves. We want to help our districts with projects, and we think that it is no big deal in such a large Federal budget. Well, it is a big deal, especially when you multiply all of those expenditures by 435 House Members and 100 Senators.

Let me finish by saying that I know that some members of the Committee and some of the other witnesses today will express concern about constitutional questions relating to the separation of powers.

I urge you not to get sidetracked with arguments about tilting the balance between Congress and the President. Two hundred years ago, our Founders set up a system in which the Congress would send to the President narrow bills on specific issues, and they gave him a veto power so that he could insert himself into the debate.

But the Founders did not anticipate the growth of omnibus bills, continuing resolutions, budget riders. Nor did they foresee the passage of the Impoundment Control Act of 1974. And they certainly did not anticipate that Congress would fund disaster relief or World Cup soccer grants in the Defense Department budget.

In fact, if you look at the Federalist papers, the Founders were very concerned about a usurpation of power by the legislature. The legislative branch, James Madison worried, might be "everywhere extending the sphere of its activity and drawing all power into its impetuous vortex" if it was not checked by the other branches.

I contend that this is exactly what has happened. We in Congress pin the President in a corner and give him a Hobson's choice: accept the wasteful spending or shut down the Government. I find it hard to believe that this is what the authors of our Constitution had in mind.

With that said, let me again urge the Committee to support Senator McCain's bill. I believe in truth in budgeting, but I also believe in truth in labeling. And S. 4 is the only bill that truly deserves to be called a line-item veto.

Thank you, Mr. Chairman. I would be pleased to answer any questions.

[The prepared statement of Congressman Blute appears on page 78.]

Chairman ROTH. I have just one question at this stage. In our earlier hearing, we had Judge Merritt, Chief Judge of the Sixth Circuit and Chairman of the Executive Committee of the Judicial Conference, testify before us. He urged very strongly, and I thought very persuasively in many ways, that the judicial budget ought to be exempted from this legislation on the grounds that to do otherwise could affect the independence of the judiciary.

It is my understanding that, under the budget process, the recommendation for the Judicial Administrative Office goes directly to the—well, it doesn't go directly; it goes through the executive branch without change to the Legislature. I wonder if either one of you have any comments as to the desirability of providing such an exemption.

Senator BRADLEY. I do not.

Mr. BLUTE. Well, Mr. Chairman, we dealt with that in our Committee Government Affairs. It was debated in the House fully, and that was one of the more contentious issues as to whether the judiciary should be exempted. I certainly believe that they should not be exempted. The Founders clearly dealt with the question of insulating the judiciary from pressure, but they specifically narrowed it relating to their salaries. And that is in the Constitution.

Beyond that, I think they felt that as another branch of Government, a separate branch, that it should be subject to the checks and balances that all other branches are subjected to.

We heard testimony from Governor Weld of Massachusetts about situations between the legislative appropriators in that State, in my State, and the judges concerning spending money on court officers and the like, and the fact that the Governor, the Executive, needed to discipline that process to say that what they decided on was not in the interest of the taxpayers. And he used his line-item veto to check that overreaching by the legislative appropriators in the judiciary.

So we felt and the House voted to not exempt the judiciary from the checks and balances in the line-item veto.

Chairman ROTH. Senator Glenn?

Senator GLENN. Thank you, Mr. Chairman.

As I understand it, S. 14 would allow the President to veto any tax expenditure that benefits 100 or less taxpayers, individuals and businesses, either one. Senator Bradley, I know this is something you have addressed.

This arbitrary cap of 100, averages out to about two taxpayers per State, if you want to put it on that basis, which makes it a little bit ludicrous. Why couldn't it just as well be a million? That is less than 1 percent of our population by a considerable number. What was the rationale or what is your comment on this rule of 100? I didn't understand that at all. Do you understand that one?

Senator BRADLEY. Well, Mr. Chairman, it could easily be 1 million or 2 million. There is no magic about the number 100. In fact, I think 100 is basically a ludicrous number. Having sat on the tax-writing committee now for 17 years, I can imagine a sequence where a lobbyist gets a special provision in the Tax Code, and by the time—and let's assume this is the most egregious example that anybody can imagine, and it benefits only one taxpayer but it has to be written generically, right? So maybe it benefits five or six

people. By the time that is in the code, by the time the IRS has issued the regulations, that tax lawyer will have sold that break to many more than 100 of his clients, his whole law firm. It is a ludicrous thing in terms of the process the way it works.

Then there are the other problems that I raised earlier. You know, how does the President actually determine whether 100 or fewer have actually used this? I mean, there are no statistics kept of the number of people that benefit from tax expenditures.

Senator GLENN. I understand that people call this the dalmatian bill. If it is 101, it doesn't work. [Laughter.]

Senator BRADLEY. Right. That is a good way to think about it.

If you have an exclusion from income, how do you determine how many people took an exclusion from income. You don't report it. So on its face, it is ludicrous. I think it is a well-meaning attempt to say what we are trying to do here is get at those little rifle shots that go just for a few people. Well, but you can't do that, because there is no way you can identify that it is only for one person.

Senator GLENN. Mr. Blute, what was the rationale for it, do you know?

Mr. BLUTE. The rationale behind it was that we wanted to target the President's ability in a narrow way so that the President could not roam in the Tax Code and just set tax policy which rightfully is set by Members of Congress.

Senator GLENN. Could it just as well be a million?

Mr. BLUTE. Well, we thought that was too broad. It started out at 5. In committee we adopted a Democratic amendment to move it to 100 taxpayers to narrow the scope of it. One of the great concerns—and I think it is a legitimate concern—in this whole debate is that we are tilting power to the Executive.

Now, I happen to think that the McCain bill does not tilt too much power to the Executive, but I do believe that if we allowed the President to line-item veto anything in the Tax Code or tax policy, that would be of real concern in terms of tilting too much power to the Executive. So we tried to narrow it. It is a difficult job to pick exactly what it should affect. We in the Committee adopted an amendment to limit it to 100 taxpayers or less.

Senator GLENN. One initiative I have worked on with Senator Roth—indeed, Senator Roth I guess could be termed the father of this law—is the Government Performance and Results Act, GPRA. It aims to evaluate the effectiveness of Federal programs by how they meet their objectives. To wit, are we getting our money's worth? Do the programs work?

Senator Bradley, do you know of anything similar in the world of tax expenditures? Have we ever tried to go into those and tried to really determine what works and what doesn't?

Senator BRADLEY. Mr. Chairman, a tax expenditure, once it is inserted in the code, disappears except to those who know how to utilize it. There is no review. There is no sunset on any provision. There is no annual appropriation. There is no authorization at the end of the 4 to 5 years. When a tax expenditure is inserted in the code, it is there in perpetuity.

For example, the provision I talked about earlier, if you rent your home for 2 weeks, you pay no income tax on the income derived. Well, how did that get in the code? Well, the story is, that got in

the code many years ago, when a guy had a big house next to the Masters Golf Tournament, and he also had a friend on the Finance Committee. Lo and behold, there is the provision that allows him to rent his house for 2 weeks of the Masters Golf Tournament for a pretty good fee because he has a pretty big house, and he pays no tax on that income.

Well, how do you find out about that? You find out about that only because you kind of sleuth through all the various tax bills. Any tax bill, I think if you look closely enough, will be larded with these provisions.

Senator GLENN. I had a proposal at one time, and I am thinking of dusting off the sunset amendment. You mentioned that there is no sunset on any of these things. The sunset amendment for tax expenditures under which all tax provisions would expire after a date certain unless reauthorized. Now, this puts some uncertainty in the Tax Code, I know, but do you think that is something we ought to consider?

Senator BRADLEY. Absolutely. Why not? Does the tax expenditure that was placed in the code in 1921 related to oil drilling have the same relevance in 1991 or 2001? Possibly. My guess is that maybe technology has changed. Maybe it doesn't. At least we ought to review it.

But what happens is you just add on.

Senator GLENN. Mr. Blute, would you favor a sunset arrangement on all the tax expenditures?

Mr. BLUTE. I think that would make some sense. I would like to see how long that would be, before it would sunset, before I would support it. But I think we should review some of these tax expenditures. The one that Senator Bradley mentioned would affect—I don't think just that one individual. It would affect maybe hundreds of thousands of property owners in the country and thereby, I think, should not be subject to a Presidential line-item veto but to congressional action to eliminate it because it's a broad area of tax policy.

Senator GLENN. CBO testified before this Committee and the House Government Reform Committee that these bills were unlikely to result in a significant deficit reduction. CBO cited evidence from the States and concluded that a line-item veto was used by most Governors to pursue their own priorities and for partisan purposes.

Have either of you studied the experience in the States with line-item veto? Have you looked at that?

Mr. BLUTE. Well, I would just comment on the testimony we heard from Mike Castle, who is a member of the House, former Governor of Delaware, and Governor Weld, who is the Governor of my State, who has used the line-item veto over 1,500 times. And he very clearly felt that it allowed him to reduce the budget deficit. He inherited a $3 billion deficit in our State, and he used it very well to discipline the legislature, to engage the legislature in a dialogue over the spending patterns of the State Government, and over 3 years he was able to balance that budget, not only because of the line-item veto, but there were other factors. But he very strongly feels that it is absolutely essential to an executive's ability to be part of the process.

Senator BRADLEY. Mr. Chairman, there are three answers to that. One is it will provide limited deficit reduction because it applies to only a limited area of the public spending, which would be appropriations. If we added tax expenditures, but it would still apply only to increases in tax expenditures. In other words, that which is there now would remain. No provision that I know of related to tax expenditures in the context of the line-item veto would allow a President to line-item veto, for example, the charitable contribution. It would only be increases in tax expenditures.

The second thing that it does, however, is it allows a President, if a President wanted to, to juxtapose the narrow interest with the general interest. A President can highlight an abuse, highlight an abuse in the Tax Code or highlight an abuse in the appropriations process, and by doing so raise the issue of the general interest versus the narrow interest.

Now, the third thing is, a President could misuse this. A President could use this to whip the legislative branch, threaten them with line-item vetoes of special appropriations that deal with their own districts unless they vote his way on abortion, the defense budget, whatever.

Now, that is why I think that it is not a bad idea that we sunset such a provision so that we see how a President uses it, and sunset it, if we pass it this year, not just for 2 years but do it in 4 years, 4 or 5 years, so that we could have a chance to see how it works.

But those are the three: I think it will reduce deficits slightly, but, more importantly, it will allow an examination of general versus narrow interests, and we ought to be careful and, therefore, we ought to sunset it over a period of 4 to 5 years to see if it is abused.

Senator GLENN. Thank you, Mr. Chairman.

Chairman ROTH. Senator Pryor?

Senator PRYOR. Mr. Chairman, I gave a short opening statement. Other colleagues have come in since that time, Senator McCain, for example, who is one of the chief sponsors of this. I wonder if he or others would like to go forward at this time with any opening statement. I would be glad to yield.

Chairman ROTH. Senator Levin, do you want to inquire?

Senator LEVIN. I don't have an opening statement.

Chairman ROTH. Senator Pryor, we will come back to you.

Senator PRYOR. I have a question about Social Security. What would S. 4 or S. 14 do to Social Security COLA increases? What about the trust fund? Could the President basically line-item, say, a COLA increase?

Mr. BLUTE. Well, in the House bill, it was clear to us that the President would not be able to use the line-item veto on entitlements because that would change the law. He would, in effect, be breaking the law by using the line-item veto on entitlements. He would be unable to do that. He would be prohibited by law.

Senator PRYOR. Now, that would be S. 4 or S. 14?

Mr. BLUTE. I am speaking of the House bill, which is like Senator McCain's bill.

Senator PRYOR. All right. Senator Bradley, under S. 14?

Senator BRADLEY. I think that I agree with the Congressman.

Senator PRYOR. You agree with him. We have talked about a sunset a little bit—you raised it, Senator Bradley—what would be

wrong with just trying out a line-item veto for a period of time? You have made a very good case for us moving forward. What would be wrong with a sunset after a couple of years?

Senator BRADLEY. Senator Pryor, when I ran for election the first time, that was the central part of my program: sunset all Federal programs. That was 17 years ago. I am still for it. Fine. Sunset them. Sunset the tax expenditures.

My guess is that what happens, of course, is that if you sunset everything at once, the avalanche starts to come, and you can't deal with anything because it is too much. It is like having all the Federal programs' authorization expire at the same moment. How is everybody going to review all Federal programs?

But I think in a kind of selective way, I would favor a sunset of authorized Federal programs. I would be favorable, certainly, to a sunset of tax expenditures. Many times, however, with the line-item veto, we are talking about appropriations; therefore, you would be sunsetting—what would you be sunsetting? You would have to sunset the underlying authorization that allows an appropriation.

Of course, there are, not unheard of in this process, some appropriations that are not authorized.

So I think, in general, sunsets are good ideas, although they are somewhat problematic.

Senator PRYOR. One final question. Three of us in the room—Mr. Chairman, Senator Bradley, and myself—on the Finance Committee. It appears to me that we are looking at some major revisions in tax policy.

Now, is this going to impinge upon the Finance Committee's and the Ways and Means Committee's authority over tax policy? Or are we in this Committee, through this legislation, setting new tax policy and bypassing Finance and Ways and Means?

Senator BRADLEY. I don't think so, Senator Pryor. I think that having the line-item veto apply to tax expenditures would be simply and finally putting on an equal plane spending through the Tax Code with spending through the appropriations process. That is a legitimate Governmental Affairs decision to make, particularly since it would apply only to increases in tax expenditures.

I mean, we should be under no illusion that the Tax Code doesn't just have a 2-week free rental of your home, income that you derive without paying taxes, but the big tax expenditures, people ought to understand what the big tax expenditures are. The biggest tax expenditure is the exclusion for health insurance, $66 billion. The next biggest is the employer pension contribution. The next is home mortgage interest. The next is the step-up basis at the time of death, capital gains at death. The next is the deduction for State and local income and property taxes. The next is charitable contributions. The next is accelerated depreciation. The next is deferral on capital gains on the sale of a home. The next is exclusion of Social Security benefits from tax. The next is the deduction for State and local taxes for owner-occupied homes.

So these are the top 10. Life insurance build-up is number 12. There are a lot of these tax expenditures that, of course, are so much a part of the fabric of our society that we are just not going to get at them. That is why I tend to laugh with the flat tax move-

ment in the House. You know, we are going to have a flat tax. Everybody always hears "the flat tax." I had this happen last week in a mall. A guy came up to me and said, How about the flat tax, Senator? We want the flat tax. I said, OK, well, look, you got any health insurance? Well, you know, what your employer pays, you take that into income. Are you for that? Oh, no, no, I am not for that.

You have a pension? Yes, I have a pension. Well, what about the income that your pension investment earns each year? Are you going to take that in? No, no, I don't want that. Well, what about the mortgage on your home? Oh, no. What about your property? No, no.

Suddenly flat tax is now, if we keep all these things, 35 percent and not 17 percent.

Senator PRYOR. Mr. Chairman, thank you. And thank you, Senator Bradley and Congressman Blute.

Chairman ROTH. I would say, Senator Pryor, I think you raise a very, very relevant and important question, the question as to what is and what is not a tax expenditure. As you are well aware, the Joint Committee on Taxation currently publishes an annual report on Federal tax expenditures, and in doing so, the Committee states that it uses its judgment—its judgment—in distinguishing what is part of the normal tax law and what would be considered tax expenditures.

So I think you are raising a very, very serious question as to who decides tax policy and does this open the door very wide for the executive branch to take over that responsibility.

Senator Stevens?

Senator STEVENS. Thank you, Mr. Chairman.

I am interested in Senator Bradley's comment about apparently this bill applies to increases in tax expenditures. It does not just apply to increase in appropriations. Now, many times I have reordered the priorities for spending by individual agencies in my State. The Park Service, for instance, I recall in one instance wanted some housing for employees in parks in which no visitor accommodations were provided. I secured approval of the Congress of changing those expenditures and put the money into needed facilities at parks where they did have visitors, a substantial number of visitors. In neither instance were the appropriations increased at all. It was a reordering of priority of spending by a Federal agency in my State.

Now, if tax expenditures are only included if there are increases in tax expenditures, why should the line-item veto authority be given to the President for expenditures in my State of appropriations which are merely reordering the priorities for the expenditures of that agency in one State?

Senator BRADLEY. Well, my response to you is I am not sure why it should. In other words, I think that an appropriation, the way I look at appropriations, I compare the appropriation that you just described—assuming a President wanted to get at it—since it clearly applied to a unique circumstance in one place.

Senator STEVENS. Obviously, the Park Service wanted the housing.

Senator BRADLEY. Right.

Senator STEVENS. Or they wouldn't have asked for it.

Senator BRADLEY. I would analogize that to the thing in the Tax Code that would clearly be a rifle shot, although you can't tell how many people are going to use it, that would be designed for not a big generic thing, like we are not going to tax pension build-up, but would be designed for a particular taxpayer; and you would usually do that by stating the date, the taxpayer situated in such a circumstance who did X, Y, and Z on date such and not before date Y, who was situated in the following six, seven positions, would no longer be subject to a specific tax. That would be the analogy. That would be subject to the line-item veto.

Now, it would be an increase in tax expenditures because it would be a new tax expenditure, but it would be a variation on the theme. There would have to be some hook that the person said, well, I can get this in there. There would be some five or 10 tax lawyers who have a theory about how they could do that, just as you would have a theory as to why, without increasing appropriations, you ought to be able to have this flexibility with your park in Alaska. So I would make that analogy.

Mr. BLUTE. Well, I would just say that it would be an appropriation, and it would be in a line-item form, and it would probably be included in the President's authority under the House bill.

Senator STEVENS. Clearly. But why? Why should it be? If it doesn't increase the budget, it doesn't increase the expenditure by the agency involved in a particular State, but reorders the priority, why should we give that authority to the President to change when I have been sent here to do just that?

Mr. BLUTE. Well, I think on all appropriations the President has some role to play as the Founders envisioned. In the old days, the early days, the appropriation bills were very narrowly construed, and the President could get at things in the normal course of the balance of powers. Today, if you have a bill that is an omnibus bill, the President can't get at those things. I think the President should have some role to play in the appropriations process.

Senator STEVENS. He had the role. He sent the budget up, and he requested the money for the Park Service, and I reduced the amount, changed how it was to be spent in my State. What am I sent here for, Mr. Blute?

Mr. BLUTE. Well, I think it is a shared responsibility.

Senator STEVENS. Well, where is the share? He has one pen; I have one vote. But he takes it all out. I have to go around and fight with the majority in both Houses to get that authority. He doesn't have to fight with anybody. He just vetoes it, primarily, probably, because I am a Republican.

Mr. BLUTE. Well, let me just say that the Governors that testified and many others from the State experience say that it is a twin-edged sword, the line-item veto. The President, if he uses it in a way, the executives, if they use the line-item veto in a way that is punitive, that is clearly political, there is a backlash. It is difficult. They have to deal with the legislature on a whole range of issues—and I am sure would have to come back to you, Senator—and deal on some important issues that the executives felt were important.

So the feeling by the Governors' testimony was that it is not used in that way, but used in a narrow way to discipline the budget process and to get at those particularly egregious examples of spending that can't be justified.

Senator STEVENS. Well, I am not going to argue it, but I really think that the concept of trying to give the President authority to limit the abuses of authority by the Congress is one thing. If I increased expenditures in any particular agency, if I exceeded the budget resolution for any particular item, if I went and transferred money from one function of the budget to another function of the budget, I should think there is a whole series of things where we should give the President the power to have a veto over such action. But when I am sent here to represent my people and look at a Federal agency that has a substantial impact on my State—there are more National parks in my State than any other State in the Union. As a matter of fact, 77 percent of them are in my State.

Now, I should think that that is one area that I should have the authority to decide, with the approval of a majority of both Houses, where the money is to be spent, as long as it did not exceed the budget resolution, did not change money from one function to another. But this is just a carte blanche. This gives him the authority to veto anything that is changed. A congressional change in any line item would be subject to veto. A congressional approval of a line item would not be subject to a veto, by definition. He submits the line item to us in the budget that we receive.

Now, I think that this bill has not been thought through, and, very respectfully, I disagree with it still.

Thank you, Mr. Chairman.

Senator BRADLEY. If I could come at that—or maybe I will leave it. Do you want me to come at it, or do you want me to leave—I will leave it.

Senator STEVENS. Be my guest. I still have time.

Senator BRADLEY. Well, I think you would get at the second purpose of the line-item veto: first, reduce spending, which will be marginal in the long run, probably; second, to juxtapose narrow versus general. By definition, something that is the subject of only one Senator in one State or one Congressman in one district is narrower than the broad general interest. And you do have the possibility that a President would choose to use it in a way that might not be not only in your interest but might not be in the general interest but might be used for specifically political purposes, to try to bludgeon you to do something else. That is why it is a good idea to sunset this so that we can see if that is how a President uses it or not.

Senator GLENN. Would you yield?

Senator STEVENS. Yes.

Senator GLENN. With the bills now, does the President have to put all his—let's say a bill goes over to him that has a whole bunch of expenditures in it. Then he takes them all out. He masses them. He has 20 different changes, and he sends them back to us in a lump sum. The way this is set up now, can we pick out ones? I might want to vote with Senator Stevens and say this is rational what he is doing, but he is lumped in with 20. Do we have to vote them out en bloc and approve the whole thing like we do base clo-

sure? Or can I vote with Senator Stevens and say he makes a lot of sense, we will take that one out, leave the other 19 in that the President vetoed? Do we have that choice, or do we have to vote in a bloc?

Mr. BLUTE. Well, in the House version, originally it started out as the bloc, but the House adopted a signature-gathering process which would allow a vote on a single item.

Senator GLENN. A signature-gathering process?

Mr. BLUTE. Yes, within the House to a certain number of members. I believe it was 50. I am not quite sure exactly in my memory, but that would allow for a single vote on a particular item.

Senator GLENN. That is the House bill. How about S. 14?

Mr. BLUTE. I would defer to Senator McCain on S. 14.

Senator LEVIN. If you would yield on that, I think I could answer Senator Glenn's question.

Chairman ROTH. Senator Levin?

Senator LEVIN. The way I read S. 4, the final section says, "It shall not be in order in the Senate or the House to consider any amendment to a rescission disapproval bill." You could not pick and choose.

Senator McCain says that is right.

Senator GLENN. How about S. 14? Is that different?

Senator MCCAIN. I think S. 14 has a provision for that.

Senator GLENN. For lumping it together?

Senator MCCAIN. No; for taking out.

Senator GLENN. Thank you, Mr. Chairman.

Chairman ROTH. Senator McCain, you are next in order.

Senator MCCAIN. Thank you, Mr. Chairman. I thank the witnesses for their long involvement in this issue. Congressman Blute, I would like to especially thank you for your leadership on this issue. I think it would be well to note that the House passed the line-item veto by overwhelming bipartisan numbers, I believe 294 to 130-some. And that, frankly, is encouraging to me.

I would first like to say, Mr. Chairman, I am disappointed that we are having this hearing. I am disappointed that there has obviously been a slowdown in the movement of this legislation. A joint hearing was held some time ago; unfortunately, the Senator from Ohio had other responsibilities. That happens to us all the time.

This is not a new issue. I brought this issue up six times on the floor of the Senate in the last 8 years where there was certainly ample time to debate and discuss it, this very same legislation.

When I served in the minority, I would say to my friends on the other side, I was routinely denied hearings that I requested the majority to hold. I asked for bills to move through the Governmental Affairs Committee and was routinely told no. On one occasion when I asked for a bill of mine to be considered in a markup, that request was denied.

So I would say to my friend from Ohio and my colleagues on the other side, we will abide by the rules and we will go through the normal procedures. But I am not fooled. The fact is that this is a well-known issue. It should be brought up. It should be considered, and there should be ample time for debate on the floor of the Senate. And if we are going to slow things down, then I would think that there are other ways that we can slow things down as well.

So I am disappointed in my colleague from Ohio demanding this hearing. As I say, there was a long hearing held, a joint hearing held on it. It is not a new issue, and I think we ought to go ahead and move forward.

I would point out routinely in the last 8 years I was able to see an appropriations bill the night before it was taken up on the floor of the Senate in the Congressional Record, and routinely I would see the appropriations bill on the desk on the day. The very day that the appropriations bill was to be taken up. So I would hope that that would be remembered as we debate this issue.

Second of all, I think it is very important for us to keep reminding ourselves of the fact that this power was vested in the President of the United States and he had it until 1974. For nearly 200 years, the President of the United States had this enhanced rescission power, if that is what you want to call it. I prefer to call it line-item veto. People get mixed up in semantics. That is fine. Until 1974, when the President of the United States abused this power and it was taken away from him in the form of the Budget and Rescission Act. Prior to that, the President of the United States had the authority that is embodied in S. 4. So we are not talking about some new and earth-shaking, precedent-breaking power vested in the hands of the President of the United States.

There are no tax provisions in S. 4. I think that the Senator from New Jersey makes very strong arguments. I question whether it should be included in this bill, but I think it is something that deserves debate and discussion and consideration.

My friend from Alaska talked about how it is harmful to have a provision in this bill where the President could line-item veto a specific project for his State or, in the case of the Congressman, in his or her district.

I have seen the worst kinds of abuses exactly in that area. I have seen billions of dollars for military construction come over with specific recommendations from the Department of Defense. And I have seen directly related to the influence of members of the Appropriations Committee and others those moneys moved around for military construction projects that are not needed and not wanted and that are in no way necessary for our National defense. I even watched last year when $500 million was taken out of the defense appropriations account and put into military construction in the same year when we are having the largest base closing in history. An outrageous misuse of power.

This year, we will see bases closed in America. We will see bases closed in America that have military construction projects going on on those bases. An outrageous waste of tens of millions of dollars of the taxpayers' money.

The American people, by 85 percent, 87 percent in a poll that I saw, support the line-item veto because they are tired of what has been going on. I know we probably will not win this debate, but I intend to revisit this issue, as I have for the last 8 years, for the next 8 years if necessary, because this outrageous process of pork-barreling has got to stop.

When I see, accepted by both sides in an appropriations bill at the end of the appropriations process, accepted by both sides, an amendment that requires $20 million to be spent to hire 500 em-

ployees in a specific facility in a specific State and with the provision that it cannot be overturned by any law and would be available until expended, there is something wrong. There is something wrong with the way that we do business in the Congress of the United States.

If I sound somewhat emotional about this issue, it is because I am, and it is because on November 8th the American people said these kinds of outrageous practices should come to a halt, because it is their money. It is not ours. It is theirs.

I would look forward to a rapid markup. I would hope that we would be able to get this bill to the floor as soon as possible, as was done in the other body, and that we could engage in the spirited debate and exposition of this issue which it deserves. But let's not have any doubt about the fact that this is not a new issue.

I thank the Chairman, and I have no questions.

Senator GLENN. Would the Senator yield?

Senator MCCAIN. Sure.

Senator GLENN. I want to respond to the comments, because this is not a delay hearing, whatever the Senator from Arizona may think. There were two people able to attend the joint hearing that was held over in the House. This Committee did not have a single hearing on this item. It is one of the most important items we will deal with. This really deals with the fundamental balances of power between the branches of Government.

Two people were able to attend because we had a Committee bill on the floor—unfunded mandates, which should have gotten through last year but the Republicans delayed it on the floor and wouldn't let us bring it up. We would have had congressional coverage and unfunded mandates out on the Senate floor last year. We had them reported, but couldn't bring them up because of all the delays on other things on the floor. So we had to attend to that, and I resent that the Senator thinks that I am delaying things on this. I am not. I am representing the will of our side, that we are very concerned about this.

Look at the Senators we have here this morning. This is interest in this bill. We don't usually have this kind of turnout. This is not something where I called them up and said I got this hearing so you guys please show up. This is because they are interested in this thing.

I agree with the Senator on some of the abuses, and I want to work these things out. And I think it is very important that we do that. But to imply that this is an effort to stop this legislation, it is not. And I would submit that with the unfunded mandates bill, we got bypassed, we got rolled in here on a straight party-line vote. It went to the floor, and you saw what happened there. We spent a week over there just getting procedures worked out. And if we try and do that as a regular modus operandi on this Committee, that is exactly what is going to happen.

I am very concerned about this legislation. I spent quite a bit of time reading it and looking at it. I think other members are here because of the same concern. And I can assure my friend from Arizona—with whom I have worked very closely, particularly on the Armed Services Committee, on joint things where he has pointed out some of these problems in the past, and I have agreed with him

on those—that this is not an attempt to stop this legislation. It is an attempt to get information and hopefully have a vote, maybe even some amendments here in Committee before the legislation is voted out, so that we can give the whole Senate advice, which is supposed to be the Committee's way of doing business.

I have already been told that that is not going to happen. We are going to vote it out at the markup, and that is that. We are going to vote them out without recommendation.

I think, though, that having a hearing like this is useful. I had hoped that we would be able to have a markup where we had some input to the legislation going to the floor. But if that is not to be, that is not to be. But I certainly am not trying to stop this legislation. I am just interested in making sure that we have all the information that we need before these things are voted on. And I think that is a legitimate concern of any Senator of the United States and it is in the interest of our conducting our business properly here.

Thank you, Mr. Chairman.

Chairman ROTH. I want to proceed with these hearings. These hearings are in answer to a request from the minority. They are important hearings. We did have joint hearings which were attended by a number of distinguished witnesses.

Senator GLENN. But only two Senators.

Chairman ROTH. I think if you check that day, there was not that much participation on the floor. But, in any event, the important thing is to proceed now.

I think the next person we have is Senator Lieberman.

Senator LIEBERMAN. Thank you, Mr. Chairman. I appreciate the hearing. I am for the line-item veto. I presume there are a lot of others on the Democratic side who are. This is a good opportunity to hear some views.

Senator Bradley, I missed the first brilliant part of your opening statement. I did hear and was impressed and elevated by the second brilliant half. So I am going to ask you a few questions that you may have touched on in the first part, and if you did, I am sure you will not hesitate to tell me so.

The first is: Did you give a total number for revenue foregone by tax expenditures?

Senator BRADLEY. It is about $450 billion.

Senator LIEBERMAN. $450 billion a year.

Senator BRADLEY. Yes.

Senator LIEBERMAN. Which obviously is well beyond the cost of the deficit at this point, but acknowledging that some of these tax expenditures are so woven into the fabric of our lives today that it is foolish to think that they are all going to be eliminated, but at least we open the door to consideration.

Senator BRADLEY. The line-item veto would apply only to increases.

Senator LIEBERMAN. Right. The second question is: Have you made a decision as to the relative merits of S. 4 as compared to S. 14, these two approaches that are before us?

Senator BRADLEY. No, I have not. I was a cosponsor of S. 14.

Senator LIEBERMAN. Right.

Senator BRADLEY. So I obviously feel that is a very good bill and feel very comfortable with it, as long as it has a tax expenditure portion to it.

Senator LIEBERMAN. OK. I don't have any more questions. I would just say that in supporting the line-item veto, I understand that there is a risk here, which is to say that that power will be abused, although the problem that the line-item veto can deal with is so serious that I have concluded it is worth taking that risk. And I do think it is important to say, to sort of put my own exclamation point after what you have said here, that one of the ways you deal with that risk is with the sunset provision. It is a risk worth taking for 5 years, 4 or 5 years. The other thing to say is that, unlike the balanced budget amendment, this is not frozen in the Constitution. So if there is a problem as we go along, we can address it by statute.

I appreciate your testimony, and, Congressman Blute, I appreciate your support and testimony, which I found to be helpful.

Mr. BLUTE. Thank you.

Senator LIEBERMAN. Thank you.

Chairman ROTH. Senator Levin?

Senator LEVIN. Thank you, Mr. Chairman.

First, I want to thank you for having this hearing. I don't believe that this Committee as a Committee has held hearings into this subject other than the one joint hearing that was referred to. I may be wrong on this, but I would like the staff to go back and tell us if we have had hearings on this issue as a separate Committee, and, if so, what the dates of those hearings were. Because this to me is an absolutely critical subject, and it is worth taking some time. And the idea that somehow or other we are trying to delay instead of to understand, it seems to me, is an unfair characterization of an effort by this Committee to dig into an issue which is of absolutely major concern to all of us, and hopefully to the country and to the balance of powers.

We may not be amending the Constitution here, but on the other hand, we may be violating the Constitution here if we do it wrong. And that is the area that I would like to get into.

First of all, I would ask, Mr. Chairman, that the opinion of the Department of Justice of President Reagan's Attorney General, dated July 8, 1988, be inserted in the record at this point. This is in response to Senator McCain's comment that the power existed until 1974 until Congress acted. Well, according to the Attorney General of President Reagan, there is no inherent impoundment authority. There is no textual source in the Constitution for any inherent authority to impound. To the extent that commentators are suggesting the President has inherent constitutional power to impound funds, the weight of authority is against such a broad power in the face of an express congressional directive to spend, and on and on. It is a very clear memorandum from President Reagan's Attorney General, and I would ask that it be placed in the record at some appropriate point.[1]

Chairman ROTH. Without objection.

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[1] See page 92.

Senator LEVIN. Mr. Chairman, I would like to just go through this process in S. 4 with Congressman Blute for a minute, because I want to understand how this process would work and how it complies with the Constitution.

Let's talk about tax expenditure, because I think in a way that is the clearest issue, and let's talk about one which only obviously benefits one or two people so that we are not getting into the other question, which is an interesting one, too.

Let's assume there is a revenue bill, and there is an exemption for some specific company. The President signs the bill, and under the bill let's assume it is effective upon signature.

At that point, I presume the bill is law. Would you agree with that?

Mr. BLUTE. Yes.

Senator LEVIN. Now the President comes along and sends up a rescission or rescinds under S. 4. That rescission takes away that tax benefit that the law has granted to that corporation, and the Congress does not act under S. 4. At that point, what is the status of that company's taxes? Do they get the tax break or don't they?

Mr. BLUTE. If the President vetoed that tax benefit and the Congress did nothing?

Senator LEVIN. Not veto.

Mr. BLUTE. Sent back a rescission?

Senator LEVIN. The President has signed a bill that contains a tax benefit for a company. That is law at the moment he signed it. That company can now say I have that tax benefit under the law of the land. Now, 3 days later or whatever the number of days the President is allowed, he signs a rescission document saying I rescind that tax benefit. Nothing happens. Congress doesn't act. Nothing happens.

Is that tax benefit the law of the land or isn't it, under S. 4?

Mr. BLUTE. Well, I would speak to the House version, which is similar. On the intricacies of S. 4, I would have staff——

Senator LEVIN. I am sorry. On the House version.

Mr. BLUTE. In the House version, if the President's action in putting a rescission package before the Congress was not disapproved of, then the President's action would be the action that would be the law. That means the tax benefit would be out.

Senator LEVIN. Well, as I read the Constitution, there is a presentment clause which says the way something becomes a law is that Congress sends something to the President and the President either signs it or, if he vetoes it, it can become law if the Congress overrides it. You have a new way here of something becoming law. By law, they got a tax benefit when the President signed that revenue bill. Now you are saying that there is a new way of withdrawing a tax benefit from someone, which is the President can send a piece of paper to Congress which is not acted upon. That is not one of the ways which the Constitution provides for something becoming law.

Maybe Senator Bradley can——

Senator BRADLEY. Do you want me to respond to that?

Senator LEVIN. Yes.

Senator BRADLEY. I think that you have to go back one step earlier. The assumption that here comes this big tax bill and it is

signed by the President is the point at which you have to question the premise. Because the analogy is appropriation—this is the way I would do it. Every appropriations bill, the line items would be essentially separate bills. And a tax bill would go to the President not as a giant tax bill, but it would go as separate provisions, separate bills. So that the——

Senator LEVIN. Excuse me. Separate bills or separate——

Senator BRADLEY. Yes. In other words, you would have separate enrollment for all the provisions.

Senator LEVIN. A separate bill number.

Senator BRADLEY. Yes. In other words, that is the way——

Senator LEVIN. On every single provision in the tax bill.

Senator BRADLEY. That is the way I chose to get around it. That is the way I chose to get around the problem that you are saying.

Senator LEVIN. He would have to sign, say, 5,000 bills.

Senator BRADLEY. That is right. That is right.

Senator LEVIN. Well, in that case, he could veto that separate bill under the Constitution and send it back to us.

Senator BRADLEY. That is right.

Senator LEVIN. But that is not what the House bill does.

Senator BRADLEY. I don't pretend to be the advocate of the House bill. I am trying to solve the problem that you suggested.

Senator LEVIN. The way you solve the problem, may I say, is just by having 5,000 bills instead of one tax bill. Then the Constitution would provide that the President can sign 4,999——

Senator BRADLEY. That is exactly right. That is exactly right.

Senator DORGAN. Paperwork Reduction Act. [Laughter.]

Senator LEVIN. I will let Senator Dorgan get credit for that comment. The reason for the laughter up here, he said, "Paperwork Reduction Act of 1995."

Senator BRADLEY. It would not take any more paper. It might take a few more pens, but no more paper. A few more pens, that is all.

Senator LEVIN. Do you know how many provisions there were in the Tax Reform Act that you so effectively advocated in 1986?

Senator BRADLEY. Yes, I do. There were 14,172.

Senator LEVIN. I thought there were 14,171, but whatever the number was, can you see the President signing 14,000——

Senator BRADLEY. Or thereabouts, Senator. Thereabouts.

Senator LEVIN. Congressman Blute, let me get back to this. It is a very, very serious question, the Constitution. First of all, I just want to quote the Supreme Court in *Chadha*. In *Chadha*, we tried to do something on legislative veto. We did it the wrong way. I happen to be a supporter of legislative veto, so I wasn't thrilled with what the Supreme Court outcome was in *Chadha*, but that is what the Supreme Court is there for.

The Supreme Court said that the presentment clause, as well as bicameral requirement, President's veto, and the Congress' power to override a veto, were intended to erect enduring checks on each branch and to protect the people from the improvident exercise of power by mandating certain prescribed steps. To preserve those checks and maintain the separation of powers, the carefully defined limits on the power of each branch must not be eroded. Bottom

line, we can't give it away. We can't give away our power by statute if we wanted to.

Now, I don't want to. But some do, for reasons which are legitimate reasons. But we cannot give away power which the Constitution gives to us, and the power is there are two ways to get a law passed under the Constitution. George Washington said it. Teddy Roosevelt, I guess, said it. Every President has acknowledged it, but let me just—if I can find it—read into the record what George Washington said.

"From the nature of the Constitution, I must approve all the parts of a bill or reject it *in toto*." And other Presidents have said the same thing.

So I do think that we have to face that question, and I don't see how the House bill meets that question. I can see how expedited rescission, by the way, addresses it, but I don't see how enhanced rescission, which is the House bill, meets this constitutional dilemma.

Mr. BLUTE. Well, Senator, let me just respond by saying that many constitutional scholars reviewing the House bill, in their opinion, deemed it constitutional, and the American Law Foundation issued a lengthy report looking at the House language that deemed it constitutional, also. So I guess the only final arbiter of that would be a court challenge in a Supreme Court case. But we feel that there are enough people who are constitutional scholars behind it to have a pretty good feeling that it is constitutional.

Senator LEVIN. My time is up. Thank you, Mr. Chairman.

Chairman ROTH. Senator Dorgan?

Senator DORGAN. Mr. Chairman, thank you very much.

I assume that the Chairman has proxies, so we are not going to mark this up, but it is hard for me to see a massive amount of support for the line-item veto on the other side at the moment.

I assume, however, that lack of attendance doesn't reflect a lack of interest. We hear that there are the votes to pass a line-item veto bill. We have seen it in the House and probably will see it in the Senate.

This is an important issue, and I have cosponsored Senator Bradley's legislation last year, which I think is an interesting approach.

I have looked at the legislation that passed the House and the legislation that is proposed in the Senate, and I must say I think those who seek brevity in consideration of important issues do no favor to the process of legislating, especially on important issues. The question isn't so much, it seems to me, does one have the votes. It is are we able to think through this so that we arrive at a solution that all of us, Republicans and Democrats, can, after the fact, be sure this was the right approach, a good decision, and is something that works.

I have voted a good many times for the line-item veto in various forums, with motions and so on, including in the last Congress for an initiative that Senator Bradley got a recorded vote on, and I will do so again. I happen to be one who thinks that we ought to respond to this issue.

But the interesting thing is I think what drives this issue is the political rhetoric of folks out there on the campaign trail who have convinced the American people that if we will simply get a line-

item veto, we will see the budget deficit evaporate. That is, of course, totally absurd. The reason that is used is there is a notion that if we can just keep talking about the fact that all of this money is squandered by Members of Congress who essentially are on the pig patrol out there, as our opponents characterize us, sticking little things in appropriations bills, the combination of which now creates this deficit, if we can simply eliminate that behavior, the deficit problem is solved. This will make very modest—I think Senator Bradley indicated marginal—differences with respect to deficits. And I think we ought to understand that.

You can wrap all those things, all those things that Senator McCain and others have characterized as abuses or what others talk about in one big ball, and you won't make any impression on the Federal deficit to any degree at all.

That doesn't mean we shouldn't do this, however. Senator McCain and others, people on our side, make a point that this process is a process that often doesn't give the kind of consideration we should to individual initiatives.

So I just want to make that point. This is driven politically by some with the notion that it will solve the deficit problem. It will not. It doesn't mean it shouldn't be done, however.

Let me ask a question about S. 4. S. 4 talks about, on page 2, the President may rescind all or part of any budget authority. That is different than H.R. 2, for example, where you talk about discretionary budget authority.

Under S. 4, for example, would we say the President may decide there will be no Social Security COLA? Would that be within the province of S. 4 under this language, the President may rescind all or part of any budget authority, including entitlements?

Who might answer that for me?

Mr. BLUTE. Well, I know in the House version, as you said, we do not allow for that. The Senate version I don't believe would, also, but I would defer to Senator McCain.

Senator DORGAN. Well, the Senate version reads, S. 4 reads, "The President may rescind all or part of any budget authority." It is not discretionary, but any. Presumably that means entitlements. I am asking, for example, would we then say to a President you make your judgment about a Social Security COLA? The way I read S. 4, we would be saying to the President on entitlements you can go ahead and make that judgment, you can veto that and impose a rescission if you choose.

Mr. Chairman, who would be able to answer the impact of S. 4 with respect to that question?

Chairman ROTH. Well, my understanding is it only applies to appropriations and would not apply to entitlements. But you might want to address that with Senator McCain, the author of the legislation.

Senator DORGAN. Senator McCain's staff is here. Are the people who wrote this here?

Senator PRYOR. Mr. Chairman, if I may intercede, I think that one of our witnesses coming forward in a few moments is going to address this specific issue, if I am not mistaken. I think Allen Schick is, if I am not mistaken.

Chairman ROTH. Yes, I would ask that we proceed with the witnesses and address our questions to them.

Senator DORGAN. That is fine. I am just curious, because the House does talk about discretionary, period, and that is a substantial difference.

Mr. BLUTE. Senator, if I just might say, that had a lot of discussion on the House side, and I think all Members of the House felt strongly that the President should not be allowed to use the line-item veto with regard to entitlements.

Senator DORGAN. Mr. Chairman, thank you. I will yield back my time.

Senator BRADLEY. Mr. Chairman, if I could, just as a parting good-bye, make a request? If you are going to deal with tax expenditures, which I hope you will, don't get caught in numbers. If you insist on doing numbers, do a larger number rather than a smaller number, 1 millon, 2 million, rather than 100. But even preferable to a number, simply take the exact language that is in the contract, take the exact language that was in the Michel bill last year, and use that as the definition of a targeted tax expenditure.

I would hope that you would do that. That is the clearest way to deal with tax expenditures, the way that has the broadest bipartisan support. It would be simply taking what is in the Republican contract and using that definition for the definition of targeted tax benefit.

Chairman ROTH. Thank you, Senator Bradley and Congressman Blute, for being here today.

Mr. BLUTE. Thank you.

Senator BRADLEY. Thank you.

Chairman ROTH. We would now call forward in a panel Louis Fisher, who is the senior specialist in separation of powers, Congressional Research Service, the Library of Congress; and Allen Schick, professor of public policy, George Mason University, and Visiting Fellow, Brookings Institution.

We welcome you both here. We would ask you, Mr. Fisher, to begin and to limit your remarks to 10 minutes.

TESTIMONY OF LOUIS FISHER, SENIOR SPECIALIST IN SEPARATION OF POWERS, CONGRESSIONAL RESEARCH SERVICE, THE LIBRARY OF CONGRESS

Mr. FISHER. Thank you. It is good for me to be back in this room. I was here in the early 1970's working with Senator Ervin and Senator Chiles on the Impoundment Control Act, and it is appropriate to be back here again for us to see what can be done to change it in an effective way.

We talk about the importance of balancing the budget. In doing that, we want to make sure that we also keep a balance among the political institutions. One of the fundamental premises in the Constitution is that individual rights depend on the structure of Government, that individual rights are protected when each branch has an effective check against the other. So it is very important, as you have mentioned here today, that we think about the bill not just in terms of budget, but in terms of what this does to Congress and its prerogatives, particularly the power of the purse.

That is the purpose of my statement, to look at the bill in terms of institutions of Government. What does this do the judiciary? What does this do to Presidential power? And what does this do to the congressional prerogative of the purse?

The first part of my statement talks about what you mentioned earlier, that you had a concern about the testimony of Judge Merritt as to what this bill would do to the independence of the judiciary. It is not a question of the judiciary only being protected under the Constitution, the salaries of justices. It is a different issue here. Should the President have the rescission power as a tool to be used in a punitive way against the judiciary?

Now, Judge Merritt, when he testified, recognized that the courts have to defend their budget, justify their budget, just like any executive agency. Judge Merritt recognizes that Congress has the power of the purse. The courts have to come to you and justify what they need.

The issue is whether that power should be given in any way to the President. Congress in two statutes has recognized that the President should not have that power. First is the Budget and Accounting Act of 1921. As you said, the estimates for the judiciary go to the President to be included in the budget he sends to Congress, but those judicial estimates are to come to Congress without revision. That is one check to make sure the President doesn't alter those estimates. To the extent that the judicial estimates are changed, that is a job for Congress, not the President.

The second time this was recognized was in the 1930's. The judiciary had no administrative office to arrange its affairs. Oddly, that was done by the Department of Justice. The Department of Justice put together the budget for the judiciary, decided on whether judges should get certain travel, certain clerks, and that became an issue in the 1930's. As a result, Congress for the second time, in the 1939 statute setting up the Administrative Office of the U.S. Courts, took that function away from the executive branch, took it away from the Department of Justice, and gave it to the Administrative Office to be run solely by the judiciary. So twice Congress in its history has recognized that it is dangerous and improper for Presidents to have any role in determining the budget of the judiciary other than the veto power that the President has.

That is my first point, and my statement has a number of remarks in there by people, including Attorneys General, who have recognized that it is not only anomalous, but it is improper constitutionally for a President to have any potential, as he would under the rescission power, to zing the judiciary in different areas. And that is what the rescission process is. It allows the President after the fact to go into an appropriation bill and make very specific selections on what will be cut.

So I bring that to your attention as an issue on whether the judiciary should be exempt from this process. There was concern in the House that if you exempt the judiciary, it might spread. I don't see that as an issue. I think the independence of the judiciary is such a unique principle in our constitutional structure that it can be done without having any snowball effect.

The second part of my statement has to do with augmenting Presidential power. How much can this be done to undermine the

power that Congress has always had to change the budget? I go into, in my statement, the whole history of the Budget and Accounting Act of 1921. There were people at that time who felt that when the President's budget comes to Congress, Congress should not add to the budget, or if it wanted to add to the budget, it would have to get the approval of the Secretary of the Treasury or it would have to get the approval of a departmental head or it would have to get a two-thirds majority in each House. All of that was rejected.

Congress accepted the notion of executive budgeting in the sense that the President would be responsible for submitting a budget. Once it got to Congress, it would become a legislative budget. Congress could change in any way it wanted, could increase, decrease. Congress never gave away that power.

So one of the issues on rescission is whether it would be used in a discriminatory way against congressional add-ons. I think the whole history of impoundment and statements made by executive officials, documents we have from the OMB, show that is the way it would be done.

Now that is the easiest thing to do, when you go through all the back and forth of the political process—the President wants this, you want that, you go back and forth. The President has a veto power, and says if you don't get certain things out I will veto the whole thing. You go through all the negotiation, including in the bills that go to him what Congress has decided is important, even if it increases some and it decreases some. That whole package of accommodations is then up-ended by a President who has the rescission authority to go back and just in a unilateral way rescind everything that Congress has added to the budget. It takes away Congress' right to decide budget priorities.

If we are going to do this, if we are going to give a President the right to rescind funds, I think we should do it in a way to retain the balance between the branches. We did this in 1992 when President Bush sent up his rescission message. He went out after a lot of congressional add-ons. He wanted $7.9 billion rescinded. Congress met that aggregate, actually rescinded $8.2 billion but in a way that preserved the balance. Things that Bush might have wanted were rescinded. Things that Congress might have wanted were rescinded. But it was a balance between the two branches, and that sense of balance is missing in the two bills that are before us, both in S. 4 and S. 14. S. 14 delegates less to the President, but still doesn't give Congress a right to present an alternative rescission package, as the House had done in previous years, from 1992 to 1994.

There is the potential here, as was mentioned earlier, of the President using this in a coercive way, not just to control a member's vote on appropriation matters but on nominations, on treaties, on authorizing legislation. It is a genuine threat.

Congress' power of the purse, certainly that is the central power that Congress has. I mention in my statement that the work I have done with other countries in Eastern Europe and the countries that have replaced the Soviet Union, they are most interested in Congress as an institution. They study the President. They study the independent judiciary. But they are most interested in Congress

because they have never seen a legislative body that has coequal status, that has the ability to check the President. They all know that the central way for Congress to check is through the power of the purse. So for us to weaken that in any way would be unusual in the sense of other nations looking to us for guidance.

In my statement I say that if we are concerned about budget deficits, the way to do it is through the front end, the front door. The President has to be responsible for the budgets he sends up. If he does that, the record is very clear that Congress lives within the aggregates, changes the priorities, as Congress should do, and we have an opportunity to go to a balanced budget.

If a President submits a budget that is $200 billion in deficit, $300 billion in deficit, you know that there is no way the political process in Congress can correct that. So the way to remedy the budget situation is to make the President responsible at the front end and not think that at the back end, which is the rescission process is, that we are going to make much headway on the deficit.

I will end that as part of my summary, and I look forward to questions from the Committee. Thank you very much.

[The prepared statement of Mr. Fisher appears on page 79.]

Chairman ROTH. Thank you, Mr. Fisher.

Mr. Schick?

TESTIMONY OF ALLEN SCHICK, PROFESSOR OF PUBLIC POLICY, GEORGE MASON UNIVERSITY, AND VISITING FELLOW, BROOKINGS INSTITUTION

Mr. SCHICK. Thank you, Mr. Chairman.

Neither of the pending measures, S. 4 or S. 14, is truly a line-item veto bill. Last year S. 4 would have been called "enhanced rescission authority." S. 14 would have been labeled "expedited rescission authority." Now I fear that in the name of political expedience, these measures are being renamed line-item veto bills.

This is not just a matter of labels. S. 4 is not a line-item veto bill in either procedure or result. A chief executive, whether Governor or mayor or President, who exercises a line-item veto must disapprove legislation to get his way. S. 4, however, provides for the President to cancel legislation after signing it into law, raising, I might say, the constitutional question that the Senator from Michigan addressed earlier.

In a line-item veto, the legislative branch would prevail if it disapproved the Chief Executive's veto. Under S. 4, however, Congress would lose even if it disapproved the President's action. We might as well label S. 4 "The President Always Wins" bill.

Mr. Chairman, I have worked on Government budgets for more than 30 years. As a matter of fact, 30 years ago my doctoral dissertation was on performance-based budgeting, so I kind of feel that I was ahead of the curve, and now I am behind the curve, at least with respect to line-item vetoes.

I must apologize for the strong language I use here. I have never encountered in 30 years a bill that is so ill-advised and so constitutionally defective as S. 4. It may not be defective in the legal sense. The courts will decide that. But certainly it is in the political sense, for it would fundamentally change the constitutional arrangement

for how laws are made and unmade, and it would strip much of the power of the purse from Congress.

Mr. Chairman, Presidents have extraordinary veto powers, and it is their choice alone whether to exercise that power. George Bush vetoed 36 bills in a row that Congress failed to override. It overrode only the 37th veto on the cable deregulation bill.

If Presidents took a principled stand against pork in appropriation bills, they would have tens of millions of Americans applauding them. They would prevail in that contest. Why they have refused to join that battle, why they have refused to challenge Congress on pork in report language, why they have been willing to spend money when they privately wish that we don't spend it, why, in other words, have they failed to exercise the strong powers given to them by the Constitution, is a matter that the Presidents must answer for and not Congress.

I might say that giving the Presidents this extraordinary power in S. 4 would allow an equally extraordinary loophole for Congress. In fewer than 10 words, Congress in an appropriations act would be able to nullify S. 4 if it became law. Those words would be approximately as follows: "Notwithstanding any other provision of law, the following sums shall be available." A slight change in the wording of an appropriations act would turn discretionary spending into mandatory spending.

Fortunately, this Committee and the Senate have an alternative to S. 4. I urge you to give serious bipartisan consideration to S. 14, a bill which would strengthen the Impoundment Control Act and which I believe, can with some revisions, be further improved.

Proponents of S. 4 argue that it would give the President the same veto power Governors of 43 States now have. It just is not so. S. 4 would go well beyond the line-item veto powers of Governors. In most States, the Governor must either veto or sign an item of expenditure. S. 4 would allow the President to eliminate or reduce any item. In contrast to a true line-item veto, S. 4 would empower the President to nullify report language, not just the text of legislation. The President would even be able to disapprove matters that are not itemized in either legislation or in committee reports. Thus, the President would enjoy virtually unfettered power in deciding how much would be spent and what the money would be spent on.

Under S. 4 this power would not be limited to appropriation acts. It would also extend to substantive laws, including entitlements legislation and any other form of direct spending. And as a matter of fact, it could be applied to old laws enacted 10, 20, 50, 100 years ago, not just to laws passed this year or last year. It might reach permanent appropriations financed in appropriation bills because the language of S. 4 enables the President to"rescind all or part of any budget authority." This phrase applies to the entire spending side of the Federal budget.

S. 4 would lead to situations where the money would be vetoed away, but the rights of recipients and beneficiaries would remain, for example, with respect to a cost-of-living adjustment to Social Security. Forty million Americans on Social Security would be entitled under law to that adjustment; only the money would not be available to pay them, if the President exercises his veto power.

In this and other ways, S. 4 would debilitate Congress' constitutional power of the purse. This legislation would permit the President to effectively cancel laws passed by Congress. True, Congress could override a Presidential rescission, but it would take three full sets of votes for Congress to prevail in a budget dispute. First, Congress would have to pass the appropriation act. Second, Congress would have to approve a rescission disapproval bill. Third, Congress would have to disapprove a Presidential veto of a rescission disapproval bill which disapproved an appropriation made by Congress.

Talk of legislative gridlock. This is opening the barn door to it. There would be as many as nine sets of actions; House-Senate and conference—three times three—to enact a simple appropriation.

Now, how can the President cancel an appropriation made by Congress? The answer is that he cannot, and S. 4 recognizes that he cannot. It skirts this messy question by stating that rescinded funds "shall be deemed canceled" unless a rescission disapproval bill were enacted into law. This is not the first time that the questionable "deemed" procedure has been used by Congress to get around constitutional niceties. The House uses this procedure to avoid voting directly on debt limit bills. In the past, the Senate stood firm against pretending that laws were passed when they were not. It should stand firm again.

S. 4 would bar floor amendments to a rescission disapproval bill unless permitted by an extraordinary three-fifths majority. I do not understand why normal legislative procedures should not be applied to House and Senate consideration of this type of measure.

Without going into detail, S. 4 would do relatively little to reduce Federal spending. The evidence is overwhelming from State practice on this score. What drives Federal spending are broad programs that provide general benefits, not pork and not earmarked spending. Presidents specialize in promoting national programs. One President asks more money for defense, another for communities, one for science, another for investment, one for technology, another for job training. This has been the story of Presidential power over the last half-century. Presidential spending demands are the drivers of the Federal budget, as they should be. But as much as we may abhor some of the earmarks in appropriation acts or in the report language that accompanies them, we should not mistake these items to be the cause of the imbalance that the Federal budget faces.

I believe S. 14 would permit a more balanced relationship between the President and Congress. In order to rescind funds, Congress would have to positively vote to do so. I think that the Impoundment Control Act of 1974 was defective in allowing Congress to prevail or rescissions without a vote, by inaction. S. 14 would correct this by expediting and requiring a vote on proposed rescissions.

Very briefly I would suggest three changes in S. 14. First of all, the President should be able to submit a rescission bill any time during the year and have it fast-tracked. Secondly, Congress should be able not only to strike an item proposed by the President, but to reduce it as well. Finally, there is a great deal of misunderstanding on the matter of tax expenditures. I believe that the proposal

in S. 14 for limiting the rescission to targeted tax benefits that have fewer than 100 beneficiaries—we can have a higher or lower threshold—is absolutely correct.

I believe general tax expenditures should be treated exactly the same as entitlements. Neither entitlements nor general tax expenditures ought to be subject to the rescission power of the President. In fact, targeted tax expenditures have been subject to extraordinary legislative activity since 1982. Dozens of targeted tax expenditures have been eliminated or curtailed by vote of Congress since 1982.

The reason why tax expenditures continue to rise is not because of recent acts of Congress but because of the interaction of tax expenditures and the Tax Code. There is a very simple way to eliminate every single tax expenditure, and that is to reduce tax rates to zero. At zero tax rates, tax expenditures would be worth nothing. It is the rise in tax rates and tax liabilities that more than anything else accounts for the rise in tax expenditures, not action by Congress. We ought to be clear about that.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Schick appears on page 85.]

Chairman ROTH. Thank you, Mr. Schick.

I have just received a copy of a letter that I would include as part of the record, if there is no objection, from Mr. Mikva, counsel to the President, the Honorable Gilbert S. Merritt, Chief Judge of the U.S. Court of Appeals. It says, "Dear Gil: I am responding to your letter of January 13, 1995, requesting the administration's assistance for the position that the judiciary should be excluded from the President's line item veto power that Congress is currently considering. I spoke to Alice Rivlin about this issue, and she has agreed that the administration should support your position. This issue did not come up in her testimony before the Senate Budget Committee last week, but she has indicated that she will make the administration's view known to Congress when the opportunity arises. I am pleased that we have agreement on this issue."

[The letter of Mr. Mikva appears on page 50.]

Chairman ROTH. Mr. Fisher, you addressed that matter in your testimony. I assume that you agree with this letter. I wonder if you have any comment, Mr. Schick.

Mr. SCHICK. I just wonder whether we should apply the same logic to spending by Congress and any law that bars the President from revising appropriations made to the judicial branch should also ban the President from revising appropriations made to the legislative branch, and for the same reason, the independence of the various branches.

Chairman ROTH. But I would ask you to address my question.

Mr. SCHICK. I take the same position as Dr. Fisher, Mr. Chairman, which is that the judiciary doesn't need additional protection of its independence.

Chairman ROTH. Senator Glenn?

Senator GLENN. Thank you, Mr. Chairman.

In the CRS report on this, under the existing rescission process the burden is on the President, it says Congress passed the Impoundment Control Act of 1974, Title X of Congressional Budget Impoundment Control Act, to restrict the power of the President to

terminate or reduce spending for Federal programs. During the early 1970's, the Nixon administration resorted to impoundment to reduce and in some cases eliminate Federal programs. About 80 cases were decided by the Federal courts, with the great majority against the administration. The Impoundment Control Act represented an effort to constrain the President's ability to withhold funds from agencies.

That does not address, though, what the basis for the President's authority was prior to that time. Senator McCain said earlier that S. 4 would basically restore rescission law prior to 1974. Is that true? Is that what this would do? Or what was the law prior to 1974 then that Nixon apparently violated so that we needed the Congressional Budget Impoundment Control Act?

Mr. FISHER. I am glad you read from that report, because I think it is true there were about 80 cases decided during the Nixon years, and the Nixon administration won in lower court only about two or three of those cases. So the courts did not accept the notion that the President had any inherent, unchecked authority to impound. And the courts in those cases always looked at the statute as to whether the spending was mandatory; and if it was, then the President had no inherent authority not to spend. He had to release the money. So the courts did not recognize any inherent——

Senator GLENN. What basis did Nixon use for that? He just did it and Congress finally got tired of it?

Mr. FISHER. In some cases, he argued that it was necessary to fight inflation. The courts didn't accept that argument. In other cases, he argued as commander-in-chief he could do certain things. The courts didn't accept that. So none of the courts—district court, appellate, or the one case that got to the Supreme Court—accepted the kind of definition of Presidential power that the Nixon administration asserted.

Mr. SCHICK. The Presidential claim of power largely was under the Anti-Deficiency Act as it was worded at that time. The wording of the Anti-Deficiency Act was subsequently changed. But, clearly, what S. 4 contemplates goes well beyond either the claim or the exercise of Presidential power prior to 1974.

Senator GLENN. OK. I would appreciate your comments on this. I see some problems with both bills in terms of conferencing differences between House and Senate bills, and I don't think that is covered in these proposals. We have had some experience with that, difficulty in getting appointment of conferees, because that requires unanimous consent, and the appointment of conferees can be filibustered when that attempt is made on the floor. We have had that repeatedly.

I can envision scenarios under both bills where the 10 or 20 days runs out and both Houses have passed different bill versions and the President's version still becomes law.

Do you think we need to correct that? How would we do that? Should the appointment of conferees be non-debatable under these tight time frames? Or how do we do that?

Do you agree with my interpretation, first?

Mr. SCHICK. Senator, the problem would exist only under S. 4, because under S. 14 if the conferees fail to meet and, therefore, to

enact a rescission bill, the funds would not be rescinded. So it would be an S. 4 problem rather than an S. 14 problem.

But I think the solution that you suggested is quite sensible, and that is, with respect to any fast-track procedure, whether it is an impoundment or base closing or something else, Congress should have distinct procedures for appointing conferees and ensuring closure with respect to the work of the conference.

Mr. FISHER. I agree that you have stated something of concern because you have very limited time in Congress to disapprove. Most of that time will be exhausted by House action and Senate action. As you say, not only could you filibuster the selection of conferees, you could filibuster taking up the House measure. You could filibuster even the conference report coming out. So there would have to be safeguards in the bill, particularly if you would have—the House bill, as Congressman Blute said, has a provision there to strike. So you have a potential for the House rescission bill to be different from the Senate and to go to conference. So there would have to be safeguards to make sure in those remaining days that you could complete your action.

Senator GLENN. And if I understand correctly, under S. 4, if the President exercised the line-item veto, that would stand unless Congress took action. Under S. 14 it is just the opposite, I believe. Under S. 14 if the President would line-item veto, if nothing is done then the President's rescission does not prevail.

Mr. FISHER. S. 14 is like the current process. The burden is on the President to get approval. And you are right. S. 4 reverses the burden, and the President's recommendations would become law unless you stop them in a bill that can be vetoed.

Senator GLENN. I guess what I would prefer to see is S. 14, but with that same provision of congressional act as is under S. 4. Maybe that corrects things a little bit. I don't know.

As currently drafted, S. 4 states that the President has the authority to reduce any portion of budget authority, and does not attempt to define budget authority. Budget authority is defined in the Congressional Budget Act as both entitlement and appropriations spending. Both entitlement and appropriations.

Would S. 4 be improved by an amendment to strike the language "budget authority" and replace it with discretionary appropriations?

Mr. SCHICK. Yes, Mr. Chairman, I think it would be improved. That probably that was the intention of the drafters of S. 4, they wanted to limit rescission to discretionary appropriations. The change you suggested can be easily made.

Mr. FISHER. Yes, this is very clear. The House debated it, the addition of the adjective "discretionary." People knew what they were doing. The Committee report on the House side is very clear. It is not to get to entitlements.

And, Mr. Chairman, you said that S. 4 is limited to appropriation bills, and it is in terms of the procedure you described. But then S. 4 also says that in addition to the President doing rescissions on those appropriation bills, he may do it early in the year. That is the other way he may do it. That seems to open the door to anything called budget authority, which would get into not just entitlements that are appropriated but any type of entitlements.

So I think to restrict budget authority to discretionary budget authority, if that is what you want, in appropriation bills, it is easy to make that change.

Senator GLENN. Another item on S. 4, it has no procedures in it for floor consideration in the House, and since it is up to the Congress to pass a disapproval bill within 20 days under S. 4, it seems to me that we need some sort of time limit for debate in the House. Have you given that any thought, or would you have any ideas on that?

Mr. FISHER. There was debate on the House side on that. They decided not to put in any sort of limit. You would think, with the clock ticking, you ought to have some deadlines to make sure the Senate has time to go to conference. So I think you should have some deadlines on House action; otherwise, the Senate will be up against the wall without time to complete what it wants to do.

Senator GLENN. If you just delay things, why, the President prevails in that situation.

Mr. FISHER. Yes, he does.

Senator GLENN. Thank you, Mr. Chairman.

Chairman ROTH. Thank you, Senator Glenn.

Senator Levin?

Senator LEVIN. Thank you, Mr. Chairman.

Mr. Schick, I am interested in the constitutional problem that I see, as you notice from my prior question. I don't see how we can purport to create a third way of passing a law. The Constitution seems to be very clear: There are two ways to do it. And S. 4, as I read it, would create an additional way, which is for the President to submit this rescission document to the Congress and then for Congress not to act.

The argument apparently that is made that S. 4 is constitutional relates to the question of delegation of authority, that we can delegate legislative authority to an executive branch officer. My understanding of that doctrine is that it is made in the context of the execution of a law and not in the context of passing a law to begin with. It is not in the legislative process context that we delegate, but, rather, in an executive context.

But let me ask you, first of all, do you believe that the delegation doctrine is sufficient to support the constitutionality of S. 4?

Mr. SCHICK. I believe that the delegation doctrine might be deemed to be sufficient to support expanded rescission power, because the language of S. 4 doesn't actually cancel or nullify a law. It has the effect of canceling or nullifying appropriations, but what it does—the language "deemed to be canceled" means the law remains on the books, but the President under the delegation from Congress is told to carry it out in a particular way. So I think this arrangement might be upheld on constitutional grounds. Nevertheless, it would be imprudent to do so.

Senator LEVIN. Have you studied the delegation cases?

Mr. SCHICK. I think Dr. Fisher is more expert than I am on those.

Senator LEVIN. OK.

Mr. FISHER. I have studied them, and the point I made at the end of my statement was to say that the courts, with a very liberal non-delegation doctrine, would probably uphold this. But that

doesn't mean that it is constitutional, because Members of Congress are supposed to protect their own prerogatives. So the fact that it satisfies the court doesn't mean it should satisfy Congress.

I think the distinction you made is valuable. In delegating authority the President is supposed to carry out the law, to see that the law is faithfully executed. But to undo law, which this does, is a different matter. And in the past, when Congress has done that, allowed the President to unmake law, it always had the check either of the one-House veto or the two-House veto, which is now gone because of *Chadha*. So we are in a different world where before you could delegate authority for the President to make law, you could check him, short of a public law, but now under *Chadha* the only way you can check him is through a bill that is presented to him. He can veto it, and now you are in a spot where you need a two-thirds in each House to maintain control.

So I think even though the delegation doctrine under case law would uphold this, Congress should think very carefully about whether its prerogative should be transferred in this way and not depend on the courts to do the job for you.

Senator LEVIN. Go back to my tax example. We pass a revenue bill. It has a special provision for one taxpayer. And that bill is signed by the President. It is now the law of the land, and the person is not subject to a tax under that law.

Now the President, if he submits a document to the Congress, in effect is saying that that person will be subject to a tax, will not get the exemption.

How is that carrying out a law?

Mr. FISHER. I think the courts would likely say that what Congress is doing when it passes the original tax bill is giving that individual a potential tax benefit, potential in the sense that the President will have this opportunity through rescission to recommend its termination, and if Congress can't overturn it, the person will lose the benefits. I think what we are doing on appropriations and tax provisions is making everything tentative depending on this review period. And if you don't overturn, the person loses the benefit.

Senator LEVIN. Do you see the enhanced rescission as being, in effect, the same thing as a line-item veto?

Mr. FISHER. No, and Chairman Clinger on the House side said it very accurately; that enhanced rescission is much more potent and powerful than a line-item veto. That is why there is such confusion. There was a lot of confusion on the House side, but people think when you say line-item veto, the President gets the bill and can knock out items. If you amended the Constitution to give a President item veto, you would not give him that much because we don't itemize appropriation bills.

But enhanced rescission allows him after the fact to go down and not just the lump sum funds in the appropriation bill but into the dollars, into the conference report, and to anywhere, he can go as deep as he likes with enhanced rescission to recommend very specific cuts. So it is a much more dramatic shift of power in S. 4 than under a constitutional amendment.

Senator LEVIN. Have you seen drafts of constitutional amendments on line-item veto?

Mr. FISHER. Yes.

Senator LEVIN. And how are they generally worded, or is there a common thread to that?

Mr. FISHER. Well, they generally——

Senator LEVIN. You said it doesn't go as far as enhanced rescission. How far would they typically go, a constitutional amendment?

Mr. FISHER. Well, they would give a President the right to veto items in an appropriation bill, and that means he is limited to the language in the appropriation bill. So that if the appropriation bill is lump sum, which they are, that is all he can do: $1 billion for Corps of Engineers general construction, he can either say yes to the whole thing or no to the whole thing. He can't go inside that. But with enhanced rescission he can.

Senator LEVIN. Would you agree that a line-item veto in its pure sense would be unconstitutional, without a constitutional amendment, obviously? In other words, would the statute providing a line-item veto to the President and its actual accurate use be unconstitutional?

Mr. FISHER. Oh, yes. To allow him to do something short of a yes or no would be unconstitutional.

Senator LEVIN. But you believe we can do something which is even a greater removal of legislative authority to the President without a constitutional amendment, at least possibly?

Mr. FISHER. I think under case law it is possible. I think Congress—I don't know if Congress fully understands the issue you are raising, how much is being given away, how much discretion is being given to the President.

Mr. SCHICK. Can I interrupt, Senator? The reason for this is that the delegation would be made by Congress itself. That is why the courts would be looking favorably on it. It would be Congress, should S. 4 or a similar version be enacted, that would be voluntarily conditioning the availability of funds on the possibility of a Presidential action.

Senator LEVIN. Do you think we can——

Mr. SCHICK. So that Congress would be yielding the power to the President, and so that is why it shouldn't go beyond the line-item veto.

Senator LEVIN. Do you think we can yield power which the Constitution gives to us without amending the Constitution?

Mr. SCHICK. That is what delegation allows you to do.

Senator LEVIN. But delegation is constitutional because it is an executive executing a law. This gets into the law-making function.

Mr. SCHICK. Yes, that is why Dr. Fisher and I, I think, share the view that this would be ill advised.

Senator LEVIN. I understand the ill-advised argument, but I want to get to the constitutional argument.

Mr. SCHICK. I think there is a possibility. The delegation power has been very liberally applied. It is rare, indeed, that the courts say these days that Congress cannot delegate something to the President.

Senator LEVIN. Just so we are clear, you would agree that the line-item veto would violate the Constitution; is that correct?

Mr. FISHER. Yes.

Mr. SCHICK. Yes.

Senator LEVIN. But you believe that we can give away even more power through a delegation provision in the enhanced rescission; is that correct? Or we might be able to give away more; is that correct?

Mr. SCHICK. Yes.

Mr. FISHER. Well, you know that——

Senator LEVIN. I am not saying it is wise to give it away. I think it is foolish to give it away. My argument is I don't think you can give away a constitutional power without amending the Constitution, but I need your testimony, not mine. So my question is: Do you believe that it is possible, at least, that we can give away, through a delegation process and an enhanced rescission bill, more power than we are prohibited from giving away under a line-item veto bill? That is my question.

Mr. FISHER. Yes, and when you say "can," can Congress give away its powers, it does it. It does it in the war power area. Certainly the President has far more war power than he should have under the Constitution as written. And Justice Jackson, you may remember, in the steel seizure case, said that only Congress can prevent power from slipping through its fingers.

So Congress has transferred and abdicated a great deal of power, not just in spending but——

Senator LEVIN. May I ask one more question? I see my time is up, Mr. Chairman. On the War Powers Act, could we delegate to the President the power to declare war?

Mr. FISHER. I don't think we can. That is certainly explicitly given to Congress under the Constitution.

Senator LEVIN. Mr. Schick?

Mr. SCHICK. No, we couldn't.

Senator LEVIN. Thank you. Thanks, Mr. Chairman.

Chairman ROTH. Thank you, Senator Levin, and thank you, gentlemen, for your testimony today.

The Committee is in recess.

[Whereupon, at 12:06 p.m., the Committee was adjourned.]

APPENDIX

II

Calendar No. 26

104TH CONGRESS
1ST SESSION

S. 4

[Report No. 104–9]

[Report No. 104–13]

To grant the power to the President to reduce budget authority.

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 1995

Mr. DOLE (for himself, Mr. MCCAIN, Mr. COATS, Mr. KYL, Mr. HELMS, Mr. MURKOWSKI, Mr. ASHCROFT, Mr. BOND, Mr. GRAMS, Mr. GRAMM, Mr. DEWINE, Mr. BROWN, Mr. BURNS, Mr. CHAFEE, Mr. COVERDELL, Mr. CRAIG, Mr. GREGG, Mr. INHOFE, Mrs. KASSEBAUM, Mr. KEMPTHORNE, Mr. MCCONNELL, Mr. NICKLES, Mr. SANTORUM, Mr. SHELBY, Mr. SMITH, Mr. WARNER, Ms. SNOWE, Mrs. FEINSTEIN, and Mr. THOMAS) introduced the following bill; which was read twice and referred jointly pursuant to the order of August 4, 1977, to the Committees on the Budget and Governmental Affairs, with instructions that if one committee reports, the other committee have thirty days to report or be discharged

FEBRUARY 27 (legislative day, FEBRUARY 22), 1995

Reported by Mr. DOMENICI, with amendments, without recommendation

[Omit the part struck through and insert the part printed in italic]

Referred to the Committee on Governmental Affairs for not to exceed thirty days

MARCH 7 (legislative day, MARCH 6), 1995

Reported by Mr. ROTH, without amendment, without recommendation

A BILL

To grant the power to the President to reduce budget authority.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Legislative Line Item Veto Act of 1995".

SEC. 2. ENHANCEMENT OF SPENDING CONTROL BY THE PRESIDENT.

The Impoundment Control Act of 1974 is amended by adding at the end thereof the following new title:

"TITLE XI—LEGISLATIVE LINE ITEM VETO RESCISSION AUTHORITY

"PART A—LEGISLATIVE LINE ITEM VETO RESCISSION AUTHORITY

"GRANT OF AUTHORITY AND CONDITIONS

"SEC. 1101. (a) IN GENERAL.—Notwithstanding the provisions of part B of title X and subject to the provisions of part B of this title, the President may rescind all or part of any budget authority, if the President—

"(1) determines that—

"(A) such rescission would help balance the Federal budget, reduce the Federal budget deficit, or reduce the public debt;

"(B) such rescission will not impair any essential Government functions; and

"(C) such rescission will not harm the national interest; and

"(2)(A) notifies the Congress of such rescission by a special message not later than twenty calendar days (not including Saturdays, Sundays, or holidays) after the date of enactment of a regular or supplemental appropriations Act or a joint resolution making continuing appropriations providing such budget authority; or

"(B) notifies the Congress of such rescission by special message accompanying the submission of the President's budget to Congress and such rescissions have not been proposed previously for that fiscal year.

The President shall submit a separate rescission message for each appropriations bill under paragraph (2)(A).

"(b) RESCISSION EFFECTIVE UNLESS DISAPPROVED.—(1)(A) Any amount of budget authority rescinded under this title as set forth in a special message by the President shall be deemed canceled unless during

the period described in subparagraph (B), a rescission disapproval bill making available all of the amount rescinded is enacted into law.

"(B) The period referred to in subparagraph (A) is—

"(i) a congressional review period of twenty calendar days of session under part B, during which Congress must complete action on the rescission disapproval bill and present such bill to the President for approval or disapproval;

"(ii) after the period provided in clause (i), an additional ten days (not including Sundays) during which the President may exercise his authority to sign or veto the rescission disapproval bill; and

"(iii) if the President vetoes the rescission disapproval bill during the period provided in clause (ii), an additional five calendar days of session after the date of the veto.

"(2) If a special message is transmitted by the President under this section during any Congress and the last session of such Congress adjourns sine die before the expiration of the period described in paragraph (1)(B), the rescission shall not take effect. The message shall be deemed to have been retransmitted on the first day of the succeeding Congress and the review period referred to in

paragraph (1)(B) (with respect to such message) shall run beginning after such first day.

"DEFINITIONS

"SEC. 1102. For purposes of this title the term 'rescission disapproval bill' means a bill or joint resolution which only disapproves a rescission of budget authority, in whole, rescinded in a special message transmitted by the President under section 1101.

"DEFICIT REDUCTION

"SEC. 1103. (a) If Congress fails to disapprove a rescission of discretionary spending under this part within the period of review provided under this part, the President shall, on the day after the period has expired, reduce the discretionary spending limits under section 601 of the Congressional Budget Act of 1974 for the budget year and any outyear affected by the rescissions to reflect the amount of the rescission.

"(b) If Congress fails to disapprove a rescission of discretionary spending under this part within the period of review provided under this part, the chairs of the Committees on the Budget of the Senate and the House of Representatives shall, on the day after the period has expired, revise levels under section 311(a) and adjust the committee allocations under section 602(a) to reflect the amount of the rescission.

"(c) If Congress fails to disapprove a rescission of direct spending under this part within the period of review provided under this part, the President shall, on the day after the period has expired, adjust the balances for the budget year and each outyear under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 to reflect the amount of the rescission.

"PART B—CONGRESSIONAL CONSIDERATION OF LEGISLATIVE LINE ITEM VETO RESCISSIONS

"PRESIDENTIAL SPECIAL MESSAGE

"SEC. 1111. Whenever the President rescinds any budget authority as provided in section 1101, the President shall transmit to both Houses of Congress a special message specifying—

"(1) the amount of budget authority rescinded;

"(2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific project or governmental functions involved;

"(3) the reasons and justifications for the determination to rescind budget authority pursuant to section 1101(a)(1);

"(4) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the rescission; and

"(5) all facts, circumstances, and considerations relating to or bearing upon the rescission and the decision to effect the rescission, and to the maximum extent practicable, the estimated effect of the rescission upon the objects, purposes, and programs for which the budget authority is provided.

"TRANSMISSION OF MESSAGES; PUBLICATION

"SEC. 1112. (a) DELIVERY TO HOUSE AND SENATE.—Each special message transmitted under sections 1101 and 1111 shall be transmitted to the House of Representatives and the Senate on the same day, and shall be delivered to the Clerk of the House of Representatives if the House is not in session, and to the Secretary of the Senate if the Senate is not in session. Each special message so transmitted shall be referred to the appropriate committees of the House of Representatives and the Senate. Each such message shall be printed as a document of each House.

"(b) PRINTING IN FEDERAL REGISTER.—Any special message transmitted under sections 1101 and 1111 shall be printed in the first issue of the Federal Register published after such transmittal.

"PROCEDURE IN SENATE

"SEC. 1113. (a) REFERRAL.—(1) Any rescission disapproval bill introduced with respect to a special message shall be referred to the appropriate committees of the

House of Representatives or the Senate, as the case may be.

"(2) Any rescission disapproval bill received in the Senate from the House shall be considered in the Senate pursuant to the provisions of this section.

"(b) FLOOR CONSIDERATION IN THE SENATE.—

"(1) Debate in the Senate on any rescission disapproval bill and debatable motions and appeals in connection therewith, shall be limited to not more than ten hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

"(2) Debate in the Senate on any debatable motion or appeal in connection with such a bill shall be limited to one hour, to be equally divided between, and controlled by, the mover and the manager of the bill, except that in the event the manager of the bill is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from the time under their control on the passage of the bill, allot additional time to any Senator during the consideration of any debatable motion or appeal.

"(3) A motion to further limit debate is not debatable. A motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed one, not counting any day on which the Senate is not in session) is not in order.

"(c) POINT OF ORDER.—(1) It shall not be in order in the Senate or the House of Representatives to consider any rescission disapproval bill that relates to any matter other than the rescission of budget authority transmitted by the President under section 1101.

"(2) It shall not be in order in the Senate or the House of Representatives to consider any amendment to a rescission disapproval bill.

"(3) Paragraphs (1) and (2) may be waived or suspended in the Senate only by a vote of three-fifths of the members duly chosen and ~~sworn.".~~ *sworn.*

"SEC. 1114. This title shall cease to be effective on September 30, 2002.".

II

Calendar No. 27

104TH CONGRESS
1ST SESSION

S. 14

[Report No. 104–10]

[Report No. 104–14]

To amend the Congressional Budget and Impoundment Control Act of 1974 to provide for the expedited consideration of certain proposed cancellations of budget items.

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 1995

Mr. DOMENICI (for himself, Mr. EXON, Mr. CRAIG, Mr. BRADLEY, Mr. COHEN, Mr. DOLE, Mr. DASCHLE, and Mr. CAMPBELL) introduced the following bill; which was read twice and referred jointly pursuant to the order of August 4, 1977, to the Committees on the Budget and Governmental Affairs, with instructions that if one committee reports, the other committee have thirty days to report or be discharged

FEBRUARY 27 (legislative day, FEBRUARY 22), 1995

Reported by Mr. DOMENICI, with an amendment, without recommendation

[Strike out all after the enacting clause and insert the part printed in italic]

Referred to the Committee on Governmental Affairs for not to exceed thirty days

MARCH 7 (legislative day, MARCH 6), 1995

Reported by Mr. ROTH, with an amendment, without recommendation

[Insert the part printed in bold italic]

A BILL

To amend the Congressional Budget and Impoundment Con-

trol Act of 1974 to provide for the expedited consideration of certain proposed cancellations of budget items.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

~~SECTION 1. SHORT TITLE.~~

~~This Act may be cited as the "Legislative Line Item Veto Act".~~

~~SEC. 2. EXPEDITED CONSIDERATION OF CERTAIN PROPOSED RESCISSIONS AND REPEALS OF TAX EXPENDITURES AND DIRECT SPENDING.~~

~~(a) IN GENERAL.—Title X of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 621 et seq.) is amended by adding after section 1012 the following new section:~~

~~"EXPEDITED CONSIDERATION OF CERTAIN PROPOSED RESCISSIONS AND REPEALS OF TAX EXPENDITURES AND DIRECT SPENDING~~

~~"SEC. 1012A. (a) PROPOSED CANCELLATION OF BUDGET ITEM.—The President may propose, at the time and in the manner provided in subsection (b), the cancellation of any budget item provided in any Act.~~

~~"(b) TRANSMITTAL OF SPECIAL MESSAGE.—~~

~~"(1)(A) Subject to the time limitations provided in subparagraph (B), the President may transmit to Congress a special message proposing to cancel budget items and include with that special message~~

a draft bill that, if enacted, would only cancel those budget items as provided in this section. The bill shall clearly identify each budget item that is proposed to be canceled including, where applicable, each program, project, or activity to which the budget item relates. The bill shall specify the amount, if any, of each budget item that the President designates for deficit reduction as provided in paragraph (4).

"(B) A special message may be transmitted under this section—

"(i) during the 20-calendar-day period (excluding Saturdays, Sundays, and legal holidays) commencing on the day after the date of enactment of the provision proposed to be rescinded or repealed, or

"(ii) at the same time as the President's budget.

"(2) In the case of an Act that includes budget items within the jurisdiction of more than one committee of a House, the President in proposing to cancel such budget item under this section shall send a separate special message and accompanying draft bill for each such committee.

"(3) Each special message shall specify, with respect to the budget item proposed to be canceled—

"(A) the amount that the President proposes be canceled;

"(B) any account, department, or establishment of the Government to which such budget item is available for obligation, and the specific project or governmental functions involved;

"(C) the reasons why the budget item should be canceled;

"(D) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect (including the effect on outlays and receipts in each fiscal year) of the proposed cancellation; and

"(E) all facts, circumstances, and considerations relating to or bearing upon the proposed cancellation and the decision to effect the proposed cancellation, and to the maximum extent practicable, the estimated effect of the proposed cancellation upon the objects, purposes, and programs for which the budget item is provided.

"(4)(A) Not later than 5 days after the date of enactment of a bill containing an amount designated

by the President for deficit reduction under paragraph (1), the President shall—

"(i) with respect to a rescission bill, reduce the discretionary spending limits under section 601 of the Congressional Budget Act of 1974 for the budget year and each outyear to reflect such amount; and

"(ii) with respect to a repeal of a tax expenditure or direct spending, adjust the balances for the budget year and each outyear under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 to reflect such amount.

"(B) Not later than 5 days after the date of enactment of a bill containing an amount designated by the President for deficit reduction under paragraph (1), the chairs of the Committees on the Budget of the Senate and the House of Representatives shall revise levels under section 311(a) and adjust the committee allocations under section 602(a) to reflect such amount.

"(c) PROCEDURES FOR EXPEDITED CONSIDERATION.—

"(1)(A) Before the close of the second day of session of the Senate and the House of Representa-

tives, respectively, after the date of receipt of a special message transmitted to Congress under subsection (b), the majority leader or minority leader of each House shall introduce (by request) the draft bill accompanying that special message. If the bill is not introduced as provided in the preceding sentence in either House, then, on the third day of session of that House after the date of receipt of that special message, any Member of that House may introduce the bill.

"(B) The bill shall be referred to the appropriate committee or (in the House of Representatives) committees. The committee shall report the bill without substantive revision and with or without recommendation. The committee shall report the bill not later than the seventh day of session of that House after the date of receipt of that special message. If the committee fails to report the bill within that period, the committee shall be automatically discharged from consideration of the bill, and the bill shall be placed on the appropriate calendar.

"(C) A vote on final passage of the bill shall be taken in the Senate and the House of Representatives on or before the close of the 10th day of session of that House after the date of the introduction

of the bill in that House. If the bill is passed, the Clerk of the Senate or the House of Representatives, as the case may be, shall cause the bill to be engrossed, certified, and transmitted to the other House within one calendar day of the day on which the bill is passed.

"(2)(A) During consideration under this subsection in the House of Representatives, any Member of the House of Representatives may move to strike any proposed cancellation of a budget item if supported by 49 other Members.

"(B) A motion in the House of Representatives to proceed to the consideration of a bill under this subsection shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(C) Debate in the House of Representatives on a bill under this subsection shall not exceed 4 hours, which shall be divided equally between those favoring and those opposing the bill. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit a bill under this sub-

section or to move to reconsider the vote by which the bill is agreed to or disagreed to.

"(D) Appeals from decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a bill under this section shall be decided without debate.

"(E) Except to the extent specifically provided in this section, consideration of a bill under this section shall be governed by the Rules of the House of Representatives. It shall not be in order in the House of Representatives to consider any rescission bill introduced pursuant to the provisions of this section under a suspension of the rules or under a special rule.

"(3)(A) During consideration of a bill under this subsection in the Senate, any Member of the Senate may move to strike any proposed cancellation of a budget item if supported by 11 other Members.

"(B) It shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(C) Debate in the Senate on a bill under this subsection, and all debatable motions and appeals in connection therewith (including debate pursuant to subparagraph (D)), shall not exceed 10 hours. The

time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

"(D) Debate in the Senate on any debatable motion or appeal in connection with a bill under this subsection shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill, except that in the event the manager of the bill is in favor of any such motion or appeal, the time in opposition thereto, shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from time under their control on the passage of a bill, allot additional time to any Senator during the consideration of any debatable motion or appeal.

"(E) A motion in the Senate to further limit debate on a bill under this subsection is not debatable. A motion to recommit a bill under this subsection is not in order.

"(F) If the Senate proceeds to consider a bill introduced in the House of Representatives under paragraph (1)(A), then any Senator may offer as an amendment the text of the companion bill introduced in the Senate under paragraph (1)(A) as amended if amended (under subparagraph (A)). Debate in the

Senate on such bill introduced in the House of Representatives, and all debatable motions and appeals in connection therewith (including debate pursuant to subparagraph (D)), and any amendment offered under this subparagraph, shall not exceed 10 hours minus such times (if any) as Senators consumed or yielded back during consideration of the companion bill introduced in the Senate under paragraph (1)(A).

"(4) Debate in the House of Representatives or the Senate on the conference report on any bill considered under this section shall be limited to not more than 2 hours, which shall be divided equally between the majority leader and the minority leader. A motion further to limit debate is not debatable. A motion to recommit the conference report is not in order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

"(d) AMENDMENTS AND DIVISIONS PROHIBITED.—Except as otherwise provided by this section, no amendment to a bill considered under this section shall be in order in either the Senate or the House of Representatives. It shall not be in order to demand a division of the question in the House of Representatives (or in a Commit-

tee of the Whole). No motion to suspend the application of this subsection shall be in order in the House of Representatives, nor shall it be in order in the House of Representatives to suspend the application of this subsection by unanimous consent.

"(e) REQUIREMENT TO MAKE AVAILABLE FOR OBLIGATION.—Any budget item proposed to be canceled in a special message transmitted to Congress under subsection (b) shall not be made available for obligation or take effect until the day after the date on which either House rejects the bill transmitted with that special message.

"(f) DEFINITIONS.—For purposes of this section—

"(1) the term 'appropriation Act' means any general or special appropriation Act, and any Act or joint resolution making supplemental, deficiency, or continuing appropriations;

"(2) the term 'direct spending' shall have the same meaning given such term in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985;

"(3) the term 'budget item' means—

"(A) an amount, in whole or in part, of budget authority provided in an appropriation Act;

"(B) an amount of direct spending; or

"(C) a targeted tax benefit;

"(4) the term 'cancellation of a budget item' means—

"(A) the rescission of any budget authority provided in an appropriation Act;

"(B) the repeal of any amount of direct spending; or

"(C) the repeal of any targeted tax benefit; and

"(5) the term 'targeted tax benefit' means any provision which has the practical effect of providing a benefit in the form of a different treatment to a particular taxpayer or a limited class of taxpayers, whether or not such provision is limited by its terms to a particular taxpayer or a class of taxpayers. Such term does not include any benefit provided to a class of taxpayers distinguished on the basis of general demographic conditions such as income, number of dependents, or marital status.".

(b) EXERCISE OF RULEMAKING POWERS.—Section 904 of the Congressional Budget Act of 1974 (2 U.S.C. 621 note) is amended—

(1) in subsection (a), by striking "and 1017" and inserting "1012A, and 1017"; and

~~(2) in subsection (d), by striking "section 1017" and inserting "sections 1012A and 1017".~~

~~(c) CLERICAL AMENDMENTS.—The table of sections for subpart B of title X of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting after the item relating to section 1012 the following:~~

~~"Sec. 1012A. Expedited consideration of certain proposed rescissions and repeals of tax expenditures and direct spending.".~~

~~(d) EFFECTIVE PERIOD.—The amendments made by this Act shall—~~

~~(1) take effect on the date of enactment of this Act;~~

~~(2) apply only to budget items provided in Acts enacted on or after the date of enactment of this Act; and~~

~~(3) cease to be effective on September 30, 1998.~~

SECTION 1. SHORT TITLE.

This Act may be cited as the "Legislative Line Item Veto Act".

SEC. 2. EXPEDITED CONSIDERATION OF CERTAIN PROPOSED RESCISSIONS OF BUDGET AUTHORITY.

(a) IN GENERAL.—Title X of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 621 et seq.) is amended by adding after section 1012 the following new section:

"EXPEDITED CONSIDERATION OF CERTAIN PROPOSED RESCISSIONS OF BUDGET AUTHORITY

"SEC. 1012A. (a) PROPOSED RESCISSIONS.—The President may propose, at the time and in the manner provided in subsection (b), the rescission of any budget authority provided in an appropriations Act. Except as otherwise provided in this section, budget authority proposed for rescission under this section may not be proposed for rescission again under this title.

"(b) TRANSMITTAL OF SPECIAL MESSAGE.—

"(1) SPECIAL MESSAGE.—

"(A) IN GENERAL.—Subject to the time limitations provided in subparagraph (B), the President may transmit to Congress a special message proposing to rescind budget authority contained in an appropriations Act. Except as provided in subparagraph (B)(ii)(II), only one special message shall be transmitted under this section for any single Act and that message shall propose to rescind budget authority contained in that single Act.

"(B) TIME LIMITATIONS.—A special message may be transmitted under this section—

"(i) during the 20-calendar-day period (excluding Saturdays, Sundays, and legal

holidays) commencing on the day after the date of enactment of the provision proposed to be rescinded; or

"(ii) on the first day of a session of Congress—

"(I) for rescissions contained in an Act enacted after the adjournment of the Congress to end the preceding session; or

"(II) for rescissions in an Act enacted prior to an adjournment of Congress to end the preceding session, if a special message had been transmitted under clause (i) but Congress adjourned prior to the expiration of the 10 days of session under subsection (c)(1)(C).

"(2) DRAFT BILL.—The President shall include with each special message transmitted under paragraph (1) a draft bill that, if enacted, would rescind budget authority proposed to be rescinded in that special message. The draft bill shall clearly identify the budget authority that is proposed to be rescinded including, where applicable, each program, project, or activity to which the rescission relates.

"(3) CONTENTS OF SPECIAL MESSAGE.—Each special message shall specify, with respect to the budget authority proposed to be rescinded—

"(A) the amount of budget authority that the President proposes be rescinded;

"(B) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific project or governmental functions involved;

"(C) the reasons why the budget authority should be rescinded;

"(D) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect (including the effect on outlays and receipts in each fiscal year) of the proposed rescission; and

"(E) all facts, circumstances, and considerations relating to or bearing upon the proposed rescission and the decision to effect the proposed rescission, and to the maximum extent practicable, the estimated effect of the proposed rescission upon the objects, purposes, and programs for which the budget authority is provided.

"(4) DEFICIT REDUCTION.—

"(A) DISCRETIONARY SPENDING LIMITS.—Not later than 5 days after the date of enactment of a bill containing rescissions of budget authority as provided under this section, the President shall reduce the discretionary spending limits under section 601 of the Congressional Budget Act of 1974 for the budget year and any outyear affected by the rescission bill to reflect the rescission.

"(B) ADJUSTMENT OF COMMITTEE ALLOCATIONS.—Not later than 5 days after the date of enactment of a rescission bill as provided under this section, the chairs of the Committees on the Budget of the Senate and the House of Representatives shall revise levels under section 311(a) and adjust the committee allocations under section 302(a) or 602(a) to reflect the rescission, and the appropriate committees shall report revised allocations pursuant to section 302(b) or 602(b).

"(c) PROCEDURES FOR EXPEDITED CONSIDERATION.—

"(1) IN GENERAL.—

"(A) INTRODUCTION.—Before the close of the second day of session of the Senate and the

House of Representatives, respectively, after the date of receipt of a special message transmitted to Congress under subsection (b), the majority leader or minority leader of each House shall introduce (by request) the draft bill accompanying that special message. If the bill is not introduced as provided in the preceding sentence in either House, then, on the third day of session of that House after the date of receipt of that special message, any Member of that House may introduce the bill.

"(B) REFERRAL AND REPORTING.—The bill shall be referred to the appropriate committee. The committee shall report the bill without substantive revision and with or without recommendation. The committee shall report the bill not later than the fifth day of session of that House after the date of introduction of the bill in that House. If the committee fails to report the bill within that period, the committee shall be automatically discharged from consideration of the bill, and the bill shall be placed on the appropriate calendar.

"(C) FINAL PASSAGE.—A vote on final passage of the bill shall be taken in the Senate and

the House of Representatives on or before the close of the 10th day of session of that House after the date of the introduction of the bill in that House. If the bill is passed, the Secretary of the Senate or the Clerk of the House of Representatives, as the case may be, shall cause the bill to be transmitted to the other House on the next day of session of that House.

"(2) CONSIDERATION IN THE HOUSE OF REPRESENTATIVES.—

"(A) MOTION TO PROCEED TO CONSIDERATION.—A motion in the House of Representatives to proceed to the consideration of a bill under this subsection shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

"(B) MOTION TO STRIKE.—During consideration under this subsection in the House of Representatives, any Member of the House of Representatives may move to strike any proposed rescission if supported by 49 other Members.

"(C) LIMITS ON DEBATE.—Debate in the House of Representatives on a bill under this

subsection shall not exceed 4 hours, which shall be divided equally between those favoring and those opposing the bill. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit a bill under this subsection or to move to reconsider the vote by which the bill is agreed to or disagreed to.

"(D) APPEALS.—Appeals from decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a bill under this section shall be decided without debate.

"(E) APPLICATION OF HOUSE RULES.—Except to the extent specifically provided in this section, consideration of a bill under this section shall be governed by the Rules of the House of Representatives. It shall not be in order in the House of Representatives to consider any bill introduced pursuant to the provisions of this section under a suspension of the rules or under a special rule.

"(3) CONSIDERATION IN THE SENATE.—

"(A) MOTION TO PROCEED TO CONSIDERATION.—A motion to proceed to the consideration of a bill under this subsection in the Sen-

ate shall not be debatable. It shall not be in order to move to reconsider the vote by which the motion to proceed is agreed to or disagreed to.

"(B) MOTION TO STRIKE.—During consideration of a bill under this subsection, any Senator may move to strike any proposed rescission if supported by 11 other Members.

"(C) LIMITS ON DEBATE.—Debate in the Senate on a bill under this subsection, and all debatable motions and appeals in connection therewith (including debate pursuant to subparagraph (D)), shall not exceed 10 hours, equally divided and controlled in the usual form.

"(D) APPEALS.—Debate in the Senate on any debatable motion or appeal in connection with a bill under this subsection shall be limited to not more than 1 hour, to be equally divided and controlled in the usual form.

"(E) MOTION TO LIMIT DEBATE.—A motion in the Senate to further limit debate on a bill under this subsection is not debatable.

"(F) MOTION TO RECOMMIT.—A motion to recommit a bill under this subsection is not in order.

"(G) CONSIDERATION OF THE HOUSE BILL.—

"(i) IN GENERAL.—If the Senate has received the House companion bill to the bill introduced in the Senate prior to the vote required under paragraph (1)(C), then the Senate may consider, and the vote under paragraph (1)(C) may occur on, the House companion bill.

"(ii) PROCEDURE AFTER VOTE ON SENATE BILL.—If the Senate votes, pursuant to paragraph (1)(C), on the bill introduced in the Senate, then immediately following that vote, or upon receipt of the House companion bill, as the case may be—

"(I) if the House companion bill is identical to the version of the Senate bill on which the vote under paragraph (1)(C) was taken, the House bill shall be deemed to be considered, read the third time, and the vote on passage of the Senate bill shall be considered to be the vote on the bill received from the House; or

"(II) if the House companion bill is not identical to the Senate bill on which the vote under paragraph (1)(C) was taken, the Senate shall proceed to the immediate consideration of the House companion bill, the procedures under this paragraph shall apply except that a motion to strike all after the enacting clause and insert the text of the Senate bill shall be in order.

"(H) AMENDMENT BETWEEN HOUSES.—Overall debate on all motions necessary to resolve amendments between the Houses on a bill under this section shall be limited to 2 hours at any stage of the proceedings. Debate on any motion, appeal, or point of order under this section which is submitted shall be limited to 30 minutes, and such time shall be equally divided and controlled in the usual form.

"(4) CONFERENCE.—

"(A) AUTHORITY OF CONFEREES.—

"(i) IN GENERAL.—Except as provided in clause (ii), the conferees may only recommend that a House recede from a disagreement to an amendment of the other

House, or recede from its own amendment, and that the other House concur in such action.

"(ii) EXCEPTION.—If the second House has stricken all after the enacting clause of the first House, the amendment reported by the conferees shall include each provision that is included in the versions of both Houses, and may include a provision included by either House upon which the conferees have agreed, and may not include any other matter.

"(B) CONSIDERATION OF CONFERENCE REPORTS.—Debate in the House of Representatives or the Senate on the conference report and any amendments in disagreement on any bill considered under this section shall be limited to not more than 2 hours, equally divided and controlled in the usual form. A motion further to limit debate is not debatable. A motion to recommit the conference report is not in order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

"(C) FAILURE OF CONFERENCE TO ACT.—If the committee on conference on a bill considered under this section fails to submit a conference report within 5 calendar days after the conferees have been appointed by each House, any Member of either House may introduce a bill containing only the text of the draft bill of the President on the next day of session thereafter and the bill shall be considered as provided in this section except that the bill shall not be subject to any motion to strike.

"(d) AMENDMENTS AND DIVISIONS PROHIBITED.—Except as otherwise provided by this section, no amendment to a bill considered under this section shall be in order in either the Senate or the House of Representatives. It shall not be in order to demand a division of the question in the House of Representatives (or in a Committee of the Whole). No motion to suspend the application of this subsection shall be in order in the House of Representatives, nor shall it be in order in the House of Representatives to suspend the application of this subsection by unanimous consent.

"(e) TEMPORARY PRESIDENTIAL AUTHORITY TO RESCIND.—

"(1) IN GENERAL.—At the same time as the President transmits to Congress a special message proposing to rescind budget authority, the President may direct that any budget authority proposed to be rescinded in that special message shall not be made available for obligation for a period not to exceed 45 calendar days from the date the President transmits the special message to Congress.

"(2) EARLY AVAILABILITY.—The President may make any budget authority not made available for obligation pursuant to paragraph (1) available at a time earlier than the time specified by the President if the President determines that continuation of the rescission would not further the purposes of this Act.

"(f) DEFINITIONS.—For purposes of this section—

"(1) the term 'appropriation Act' means any general or special appropriation Act, and any Act or joint resolution making supplemental, deficiency, or continuing appropriations;

"(2) the term 'budget authority' means an amount, in whole or in part, of budget authority provided in an appropriation Act, except to fund direct spending programs ***and budget authority provided for social security****;*

"(3) the term 'rescission of budget authority' means the rescission in whole or in part of any budget authority provided in an appropriation Act; and

"(4) the term 'targeted tax benefit' means any provision of a revenue or reconciliation Act determined by the President to provide a Federal tax deduction, credit, exclusion, preference, or other concession to 100 or fewer beneficiaries. Any partnership, limited partnership, trust, or S corporation, and any subsidiary or affiliate of the same parent corporation, shall be deemed and counted as a single beneficiary regardless of the number of partners, limited partners, beneficiaries, shareholders, or affiliated corporate entities.

"(g) APPLICATION TO TARGETED TAX BENEFITS.—The President may propose the repeal of any targeted tax benefit in any bill that includes such a benefit, under the same conditions, and subject to the same Congressional consideration, as a proposal under this section to rescind budget authority provided in an appropriations Act.".

(b) EXERCISE OF RULEMAKING POWERS.—Section 904 of the Congressional Budget Act of 1974 (2 U.S.C. 621 note) is amended—

(1) in subsection (a), by striking "and 1017" and inserting "1012A, and 1017"; and

(2) in subsection (d), by striking "section 1017" and inserting "sections 1012A and 1017".

(c) CLERICAL AMENDMENTS.—The table of sections for subpart B of title X of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting after the item relating to section 1012 the following:

"Sec. 1012A. Expedited consideration of certain proposed rescissions of budget authority.".

(d) EFFECTIVE PERIOD.—The amendments made by this Act shall—

(1) take effect on the date of enactment of this Act;

(2) apply only to budget authority provided in Acts enacted on or after the date of enactment of this Act; and

(3) cease to be effective on September 30, 2002.

PREPARED STATEMENT OF CONGRESSMAN PETER BLUTE

Mr. Chairman, good morning and I thank for this opportunity to testify before the Governmental Affairs Committee.

It's my pleasure to be here today as the Senate moves forward on the road to giving the President a real line-item veto. As you know, the House voted overwhelmingly to give the President line-item veto authority on February 6 by a vote of 294 to 134.

Let me just share a few thoughts on why I believe the margin was so great, because I believe it relates to exactly why we need a line-item veto.

We are all aware that proposals for a line-item veto have been kicking around Capitol Hill for decades.

Two years ago in the House, the line-item veto lost by only 21 votes, last year by only 13 votes. This year, as I said, we won by 160 votes.

The reason is that Americans realize that the line-item veto is an important step in the direction of positive change and fiscal sanity. People from all fifty states have said to themselves, "My family had to cut out some of the luxuries from our budget in order to pay the bills during lean times, so why shouldn't the Federal Government have to do the same thing? And they sent that message loud and clear to their representatives last November.

And they demanded action, not just lipservice, which is why we brought it to the floor so quickly in the House, and why I hope you will continue to move expeditiously on it here in the other body. What the American people want—and what we should give them—is the toughest budget cutting tool possible.

Make no mistake about it, the real line-item veto, as contained in Senator McCain's bill, S. 4, is the only way to go. This is almost the exact same legislation that we passed in the House, and I believe that the Senate should follow suit.

Make no mistake about it, expedited rescission is not the line-item veto. It is a watered down solution that the House has rightly rejected as a dull butter knife when what this country really needs is razor-sharp machete to cut spending. And while I certainly respect Senator Domenici and his budget cutting efforts, the fact remains that S. 14 is expedited rescission. The only real line-item veto bill before the Senate is S. 4.

S. 4 is the only real line-item veto bill because only it would force Congress to disapprove the President's rescissions within a specified amount of days. And it is the only bill that requires a two-thirds vote to override the President.

Because of these provisions, S. 4 is the only way to prevent Congress from spending taxpayer dollars on pork projects inserted into bills in the dark of night or during conference—times when legislators know that a majority of Congress will never have the opportunity to take a separate vote to strike questionable projects.

S. 14, on the other hand, would only force a vote in one house, meaning that if the other house chose not to act at all, the rescission would never happen and wasteful spending would continue unabated.

Let's face it, sometimes we in Congress can't help ourselves. We want to help our districts with pork projects, and we think that its no big deal in such a large Federal budget.

But it is a big deal . . . especially when you multiply those $500,000 or $1.45 million expenditures by 435 House Members and 100 Senators.

Let me finish by saying that I know some members of the Committee and some of the other witnesses here today have constitutional concerns relating to separation of powers.

I urge you not to get sidetracked with arguments about tilting the balance of power between Congress and the President.

Two hundred years ago, our founders set up a system in which the Congress would send to the President narrow bills on specific issues. And they gave him veto power so that he could insert himself into the debate.

But the founders did not anticipate the growth of omnibus bills. Nor did they foresee the passage of the Impoundment Control Act in 1974. And they certainly did not anticipate that Congress would fund AIDS research, or disaster relief, or World Cup soccer grants, in the Defense Department budget.

In fact, if you look at the Federalist papers, the founders were very concerned about a usurpation of power by the legislature. The legislative branch, James Madison worried, might be "everywhere extending the sphere of its activity and drawing all power into its impetuous vortex" if it was not checked by the other branches.

I contend that this is exactly what has happened. We in Congress pin the President in a corner and give him a Hobson's choice—accept the wasteful spending or shut down the government. I find it hard to believe that this is what the authors of our Constitution had in mind.

With that said, let me again urge the Committee to support Senator McCain's bill. I believe in truth in budgeting but I also believe in truth in labeling, and S. 4 is the only bill that truly deserves to be called a real line-item veto.

Thank you and I'd be pleased to answer any questions you might have.

PREPARED STATEMENT OF LOUIS FISHER

Mr. Chairman, thank you for inviting me to testify on S. 4 and S. 14, which are legislative efforts to change the authority of the President to rescind funds. S. 4 follows the principle of "enhanced rescission," requiring Congress to disappove presidential proposals. Unless disapproved within a fixed number of days, the President's proposals would become law. S. 14 adopts the principle of expedited rescission." The President would need the approval of Congress, as is presently the case, but at least one House would have to consider and act on the President's recommendations.

The bills raise a number of questions, but in my prepared testimony I will focus on what I see as the major institutional and constitutional issues. First, would these bills threaten the independence and integrity of the Federal courts? Second, how much do they represent a significant increase in presidential power, especially the potential for coercing Members of Congress to accept executive direction not only in matters of spending but nominations, treaties, and other matters as well? Third, do these bills weaken Congress' power of the purse, which is the principal weapon available to the legislative branch to determine spending priorities and to check the President?

Independence of the Judiciary

Inherent in the rescission process is the potential for picking specific targets of opportunity. After signing appropriations bills into law, the President and his assistants are in the position to dip inside appropriations accounts and select precisely what they would like to terminate. The likelihood of punitive cuts is limited under the present system, in the Impoundment Control Act of 1974, because the President needs to obtain the approval of both Houses of Congress within 45 days of continuous session. Otherwise, rescission proposals fail and the funds must be released for obligation.

S. 14 changes the dynamics somewhat but not much. The President would still need to obtain congressional approval. The bill simply creates procedures to treat rescission proposals in an expedited manner. A limited amount of time is set aside for committee action (with provisions for automatic discharge) and for floor action.

S. 4 creates a very different scenario. Presidential proposals automatically become law within a designated period unless Congress votes to disapprove in a bill that must be presented to the President, who can then veto it. Congress now needs a two-thirds majority in each House to override the veto.

The procedure in S. 4 means that the President can propose rescissions for all of the judiciary except for the salaries of Article III Justices and judges. Proposed rescissions become law unless Congress stops the President, probably requiring a two-thirds majority in each House to prevail. The President can use the rescission process in a punitive way against the judiciary. In adversarial confrontations, it does not require an overheated imagination to think of Presidents presenting rescissions for the courts in an innocent light (for "savings" and so forth) in an effort to conceal partisan and political motivations.

If the President were to single out the judiciary for rescissions, judges would presumably enter the political arena and lobby Congress on the disapproval vote. Given the stakes, what else could they do? Do we want judges fighting publicly (or behind the scenes) to defeat a rescission proposal? Their task would be difficult because the proposals to rescind judicial funds would most likely be mixed with other rescissions as part of a general package.

In past statutes, Congress has recognized that the budgets of judges should not be subject to presidential control. With the executive branch actively involved in litigating causes in the Federal courts, it has been considered unhealthy to provide the President with any spending control over the judiciary.

For example, the Budget and Accounting Act of 1921 directed the President to prepare and present to Congress a national budget, but specifically provided that the estimates of the Supreme Court "shall be transmitted to the President on or before October 15th of each year, and shall be included by him in the Budget without revision." 42 Stat. 20, sec. 201(a) (1921). As Judge Gilbert S. Merritt noted in his testimony of January 12, 1995, before the joint hearings conducted by the House Committee on Government Reform and Oversight and the Senate Committee on Governmental Affairs, it "seems inconsistent to prohibit the Executive Branch from

changing the Judiciary's budget prior to submission, but then to give the President unilateral authority to revise an enacted budget."

Although this statute prohibited the President from altering judicial estimates, the judiciary itself did not possess a separate administrative office to prepare and implement its own budget. Instead, it had to depend on the Department of Justice for this work. The Attorney General fixed the number and the salaries of court clerks and their deputies, of judges' secretaries, and the amount and character of equipment for judges and clerks. He controlled travel arrangements, accommodations in Federal buildings, the payment of salaries of judges, clerks, and deputies, and the traveling expenses of judges and clerks. The Attorney General prepared and presented to the Bureau of the Budget an estimate for the expenses of courts. 84 Cong. Rec. 9310 (1939) (statement by former Attorney General Cummings). Several Attorneys General considered it "anomalous and potentially threatening to the independence of the courts" for the chief litigant before them—the Department of Justice—to have control of the financing of the courts and their budgets. Id. at 9309.

Congress responded by passing legislation in 1939 to create the Administrative Office of the United States Courts, with a director appointed by the Supreme Court. The Director held office at the pleasure of, and subject to removal by, the Supreme Court. Among the duties of the Director was the disbursement of moneys appropriated for the maintenance, support, and operation of the courts; the purchase, exchange, transfer, and distribution of equipment and supplies; and the examination and audit of vouchers and accounts. 53 Stat. 1223, sec. 304(3)-(5) (1939). Moreover, the Director prepared budget estimates to be submitted to the Bureau of the Budget. Id. at 1224, sec. 305. Employees of the Department of Justice engaged in the audit of accounts and vouchers were transferred to the Administrative Office of the U.S. Courts. Id. at 1225. All powers and duties conferred on the Department of Justice or the Attorney General, relating to administrative responsibilities for Federal courts, were transferred to the Administrative Office. Id. at 1226.

The legislative history of this statute underscores the need for maintaining the independence and the integrity of the judiciary. In his annual report for 1937, the Attorney General said that

> there is something inherently illogical in the present system of having the budget and expenditures of the courts and the individual judges under the jurisdiction of the Department of Justice. The courts should be an independent, coordinate branch of the Government in every proper sense of the term. Accordingly I recommend legislation that would provide for the creation and maintenance of such an administrative system under the control and direction of the Supreme Court. 84 Cong. Rec. 5791 (1939).

The *Washington Post* noted in an article on January 8, 1938, that the Federal Government "is the chief litigant in the Federal courts. It is a party in interest not alone in all the Federal criminal cases but in a large and growing number of civil actions involving the Government and its citizens." Id. at 5791–92. The newspaper further pointed out:

> There is no intention here even to intimate that the Attorney General or his aides would use their power over the purse strings of the judiciary to bring a recalcitrant judge into line. But the fact that the Attorney General could do so if he wished constitutes a factor in the relationship between the Justice Department and the courts which should be eliminated. Id. at 5792.

Senator Henry Ashurst, chairman of the Judiciary Committee, sounded a similar theme:

> No one believes that either the present Attorney General or the preceding one would use his position to attempt to intimidate any judge; but we know enough about human nature to know that no man, not even a judge, is coldly impersonal and objective with one who holds the purse strings. Id. at 9397.

Examples of executive control over judicial budgets had appeared during the Depression-inspired economies of the 1930s. Judges had been "strongly impressed by the power of the Bureau of the Budget to slash the financial estimates of the courts." Peter Graham Fish, The Politics of Federal Judicial Administration 130 (1973). Judge Merritt, in his testimony of January 12, 1995, stated that prior to 1939 the Bureau of the Budget had "refused to pass on requests for new judgeships" and the Department of Justice "cut judges' travel funds, eliminated bailiffs, criers and messengers, and reduced the salaries of secretaries to retired judges by one-half."

Exempting the judiciary from the provisions of S. 4 or S. 14 would not mean that Federal courts are immune from budget discipline. The judiciary would still have to defend its budget before Congress. As Judge Merritt pointed out, the judiciary's budget requests "are subjected to full review by the congressional appropriations committees in keeping with the fiscal power conferred on Congress by the Constitution. The Judiciary must justify each dollar it receives. This is appropriate and the Judiciary cheerfully respects this role of Congress." Moreover, the judiciary remains subject to general cutbacks, as under the sequestration procedures of the Gramm-Rudman-Hollings Acts. Judicial independence was not jeopardized by those Acts. After exempting various programs and mandating a 50:50 split between domestic and defense cuts, the remaining reductions were done across-the-board, with no opportunity for the President to target specific programs or agencies. With rescission, however, and especially enhanced rescission, the President can do precisely that: select the individual areas of the budget that he, personally, wants to cut. Enhanced rescission invites—in fact it requires—singling out candidates for reduction or elimination. Punitive cuts against the judiciary are a real possibility.

Exempting the judiciary would not trigger a snowballing effect, justifying similar treatment for other agencies and departments. The principle of judicial independence is unique. It is not transferable to other activities in the Federal Government.

Augmenting Presidential Power

These rescission bills, especially S. 4, shift power from Congress to the President. How much of a shift requires some appreciation of the Budget and Accounting Act of 1921. In requiring the President to submit a budget and in creating the Bureau of the Budget to assist him in that task, Congress was aware that it was concentrating significant power in the President. Establishing the General Accounting Office in that same statute was one method of maintaining a proper balance between the executive and legislative branches.

During consideration of the Budget and Accounting Act, some reformers wanted to restrict the ability of Congress to add funds to the President's budget. Ideas ranged from requiring a two-thirds vote in each House to obtaining the request of a departmental head or the approval of the Secretary of the Treasury. Louis Fisher, Constitutional Conflicts between Congress and the President 193–95 (1991). Those proposals were uniformly rejected by Congress. The Budget and Accounting Act created an executive budget only in the sense that the President was responsible for the estimates submitted. It was legislative in the sense that Congress retained full power to increase or decrease his estimates. Increases could be made in committee or on the floor by simple majority vote. In reporting the bill, the House Select Committee on the Budget made this point crystal clear:

> It will doubtless be claimed by some that this is an Executive budget and that the duty of making appropriations is a legislative rather than Executive prerogative. The plan outlined does provide for an Executive initiation of the budget, but the President's responsibility ends when he has prepared the budget and transmitted it to Congress. To that extent, and to that extent alone, does the plan provide for an Executive budget, but the proposed law does not change in the slightest degree the duty of Congress to make the minutest examination of the budget and to adopt the budget only to the extent that it is found to be economical. If the estimates contained in the President's budget are too large, it will be the duty of Congress to reduce them. If in the opinion of Congress the estimates of expenditure are not sufficient, it will be within the power of Congress to increase them. The bill does not in the slightest degree give the Executive any greater power than he now has over the consideration of appropriations by Congress. H. Rept. No. 14, 67th Cong., 1st Sess. 6–7 (1921).

The congressional prerogative to add to the President's budget collided with the practice of impoundment, especially during the early 1970s, when the Nixon administration regarded congressional add-ons as irresponsible and lacking in merit. Programs were cut back to the President's request and, in some cases, terminated and dismantled. Louis Fisher, Presidential Spending Power 175–201 (1975).

Congress reacted to the Nixon actions by passing the Impoundment Control Act of 1974. However, the practice of using the impoundment process to pick off congressional add-ons continued, although the burden of proof now shifted to the President because he needed approval by both Houses during the 45-day review period. Still, some Members of Congress objected to the policy of the Ford admininstration to use the rescission process to propose the elimination of congressional add-ons. House Appropriations Committee Chairman George H. Mahon declared:

> . . . it is not appropriate, in my view, for the Executive to transmit a rescission proposal that only contains funds which have been enacted into law as a result of the initiative of the Congress. I do not subscribe to the theory that everything the Executive does is correct and right and defensible, and that everything the Congress does by way of providing additional sums or modifying sums is all wrong. 121 Cong. Rec. 4158 (1975).

The executive penchant for using impoundment/rescission/item veto power to eliminate congressional add-ons should not come as a surprise. Executive officials are remarkably candid about this strategy. Budget Director Percival F. Brundage told the House Judiciary Committee in 1957: "the authority to veto an appropriation item would include authority to reduce an appropriation—but only to the extent necessary to permit the disapproval of amounts added by Congress for unbudgeted programs or projects, or of increases by Congress of amounts included in the budget." Item Veto, hearings before the House Committee on the Judiciary, 85th Cong., 1st Sess. 24 (1957). The President's 1985 Economic Report explained that adoption of the item veto "may not have a substantive effect on total Federal expenditures" but may be used by the President "to change the composition of Federal expenditures—from activities preferred by the Congress to activities preferred by the President." Economic Report of the President 96 (February 1985). A presidential game plan could not be more clearly stated.

This plan of action was visible in 1992 when President Bush submitted a package of rescissions to Congress. Included among the programs scheduled for rescission were such eye-catching names as asparagus research, celery research, Vidalia onion storage, and manure disposal—items intended to spotlight the congressional habit of adding what the administration considered to be wasteful, parochial programs. Congress accepted some of President Bush's proposals, but also cut programs favored by the administration, demonstrating an equal ability to find funny-sounding projects that seemed to Congress "to be unnecessary and wasteful Federal spending." S. Rept. No. 102–274, 102d Cong., 2d Sess. 3 (1992). For example, the Senate Appropriations Committee cut National Science Foundation research grants for "monogamy and aggression in fish in Nicaragua; the well-being of middle-class lawyers; status attainment in Chinese urban areas; sexual mimicry of swallowtail butterflies; and song production in freely behaving birds." Id. at 47.

Although political flourishes characterized part of this debate, the bottom line showed the effectiveness of the existing rescission process. If Presidents are willing to take the lead and put Congress in the position of either supporting rescissions or appearing to be 'big spenders," Congress will match the President's aggregates, even if the mix of cutbacks differs from what the President wanted. President Bush asked for a total of $7.9 billion in rescissions. Congress enacted a total of $8.2 billion. Over the life of the Impoundment Control Act, Presidents have recommended $72.8 billion in rescissions and Congress has approved $22.9 billion. On its own, Congress relied on the regular legislative process to rescind a total of $70 billion. The existing process can work if Presidents step out front.

Can Presidents use the rescission process in an attempt to control the votes of Members of Congress? The existing rescission procedure gives the President little leverage since he must secure the approval of both Houses. S. 14, even if it forces action by at least one House, also relies on a bill of approval. S. 4, by changing the burden to a bill of disapproval, greatly increases presidential power—not just over spending priorities but other national issues as well. A particular project in a district or state could be held hostage in return for the Member's support of a nominee or some other objective of the White House. In the words of Senator Paul H. Douglas:

> With item veto power, a partisan President could punish certain areas which had not supported him by withholding funds for their projects, for example, or force Senators to approve nominees to the executive branch who were repugnant to them under the threat of losing funds for certain projects, or force approval of questionable legislation under the same threat. Item Veto, hearing before the House Committee on the Judiciary, 85th Cong., 1st Sess. 94 (1957).

Coercion needn't be blatant. Subtlety will do. A presidential aide advises a Member of Congress that the OMB is considering proposing a rescission of funds for a project in the Member's district. As an aside, with a meaning that does not escape the legislator, the aide asks how the Member plans to vote on the administration's spending bill scheduled for the following week (or nomination, treaty, tax measure, etc.). The power is real.

Congress' Power of the Purse

Based primarily on its power to appropriate funds and its unique status as a representative body, Congress is justly regarded as the "First Branch of Government." The power of the purse, James Madison noted in Federalist 58, represents the "most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure."

For the past 4 years, in response congressional requests, I have provided assistance to countries in Eastern Europe and the New Independent States of the former Soviet Union. While they admire our independent judiciary and have a fascination with the American President, officials and academics from these countries are most impressed by the ability of Congress to function as a co-equal branch fully capable of checking presidential excesses. Given their history of executive domination, they understand the importance of a separate and independent legislature. They also understand that the muscle behind an independent and strong legislature is the power of the purse.

As noted above, even when Congress has passed legislation to strengthen the President's role in the budget process, as it did with the Budget and Accounting Act of 1921, it always reserved for itself the prerogative to determine budget priorities. Both bills before your committee would shift part of this power to the President. S. 14 anticipates less of a shift and even establishes a procedure that permits Members to strike a particular rescission in the President's package. However, the Appropriations Committees must report the rescission bill without substantive revision. Unlike the 1992 experience, they cannot report a different package that meets the aggregate proposed by the President. When the House of Representatives recently passed an expedited rescission bill, it permitted the Appropriations Committees to report out an alternative rescission package that rescinds an aggregate amount of budget authority equal to or greater than the aggregate proposed by the President. 139 Cong. Rec. H2138 (daily ed. April 29, 1993) (sec. 1013(c)). Through this procedure the House bill preserved a balance between executive and legislative spending priorities.

A more extensive shift of budget priorities would occur under S. 4. Here the President's proposals become law unless Congress stops him through the regular legislative process, with the disapproval bill subject to a presidential veto. Because of the two-thirds required in each House to override the veto, the President can change budget priorities under S. 4 provided he maintains a one-third plus one minority in one of the chambers. That represents a substantial shift of power to the President.

The existing legislative process allows Congress and the President ample opportunities to affect budget priorities. The President begins the process by formulating the budget and lobbying for his priorities. His capacity for mobilizing the nation is impressive. Congress then amends his budget. If congressional changes are objectionable the President can threaten to invoke his veto authority or actually exercise it. If Congress is unable to override the veto it must make further accommodations. Through these pressures and cross-pressures the two branches reach a final agreement on budget priorities.

Why allow that accommodation to be rewritten by enhanced rescission? Why assume that presidential budget decisions through the rescission process are more rational and more in keeping with the national interest than the compromises reached through the regular legislative process? Why assume that the President, in budget matters, is more responsible than Congress? These are views conventionally held, but our history does not support them.

Certainly part of the motivation behind S. 4 and S. 14 is the assumption that Members of Congress engage in too much logrolling and that presidential action through rescission is necessary to delete "pork." No doubt Members of Congress do engage in logrolling and no doubt projects of questionable value are added to the President's budget. That is one side of the picture, but only one side. The other side is an executive branch equally adept at logrolling, whether within agencies or between departments. The Blue Ribbon Defense Panel, in its report to President Nixon in 1970, concluded that the frequent unanimity of the Joint Chiefs could not be interpreted simply as subjugation of particular service views. Such unanimity could just as "cogently support a conclusion that the basis of such recommendations and advice is mutual accommodation of all Service views, known in some forums as 'log rolling,' and a submergence and avoidance of significant issues or facets of issues on which accommodations of conflicting Services views are not possible." The

Senate Armed Services Committee made the same point in 1985.[1] There is no reason, based in history, to think that the executive branch is uniquely blessed with an innate desire for economy and efficiency.

The record of recent decades indicates that Congress has played a more responsible role than the President with regard to Federal spending and the deficit. Even in the Nixon years, when executive officials regularly accused Congress of being "spendthrift" and operating on a national credit card, the record does not support the charge of legislative irresponsibility. From fiscal 1969 through fiscal 1973, appropriations bills passed by Congress were $30.9 billion below Nixon's requests. Over that same 5-year period, backdoor spending and mandatory entitlements exceeded his budgets by $30.4 billion. H. Rept. No. 147, 93d Cong., 1st Sess. 39 (1973). In terms of budget aggregates, the figures were pretty much a wash.

The period since the Nixon administration has been largely the same. Congress stays within the aggregates recommended by the President, while reserving for itself the right to shift program priorities. What is new is the decline in presidential responsibility. After forcing major changes in tax rates, defense spending, and domestic programs in 1981, President Reagan's subsequent budgets failed to confront dangerously high deficits. Congress repeatedly received budgets with projected deficits at $200 billion or more. The responsibility for facing those deficits fell to the legislative branch. Congress, including the Republican Senate, accepted this assignment and did what it could to bring deficits under control. Congress acted more in the national interest than the President. Louis Fisher, "Federal Budget Doldrums: The Vacuum in Presidential Leadership," 50 Pub. Adm. Rev. 693 (Nov/Dec. 1990).

I cannot predict the effect of enhanced or expedited rescission. We can only make informed guesses about how Presidents would use this authority. Under the best of circumstances, these reforms cannot be expected to yield more than a few billion in savings each year. Clearly they are not remedies for the current magnitude of deficits. What we need most is for Presidents to address Federal deficits at the start of the budget process, when they present their budgets. Full executive responsibility at that point is required, not partial responsibility with limited results after-the-fact with the rescission process.

The focus should be on how to strengthen the President's sense of responsibility so that he will submit budgets that include reasonable figures for aggregates: total spending, total budget authority, expected revenues, and Federal deficit. If the President does that job well, the historical record demonstrates that Congress lives within those aggregates while changing budget priorities. If the budget problem were corrected up front, at the time of budget submission, there would be little demand for reform proposals involving rescissions and item vetoes. Changing the constitutional balance of power with unpredictable results would not be necessary.

Under enhanced rescission, Congress would have to act repeatedly to enforce its spending priorities: (1) passing legislation in the first instance to appropriate funds; (2) perhaps overriding a presidential veto of that bill; (3) passing a bill or joint resolution of disapproval to overturn a presidential rescission; and (4) mustering a two-thirds majority in each House to override the expected veto. Forcing Congress to act again and again through the legislative process, sometimes by extraordinary majority, was considered institutionally demeaning to the framers of the Impoundment Control Act. By having to vote over and over to establish spending priorities, Senator Sam J. Ervin, Jr. felt that Members of Congress "would be making monkeys of themselves." 119 Cong. Rec. 15236 (1973). On the House side, Congressman Richard Bolling agreed that Congress should have to approve rescissions because it represented a change to a previous law. 120 Cong. Rec. 19674 (1974).

Enhanced rescission, as embodied in S. 4, allows the President to undo law without any legislative involvement. The scope of this transfer of power would probably pass muster in the Federal courts, given existing delegation doctrines. But the fact that the judiciary would not be disturbed if Congress gave away part of its spending power to the President does not fully answer the constitutional question. Under the theory of separation of powers it is assumed that each branch must protect its own prerogatives. Members of Congress are expected to safeguard powers granted to them by the Constitution (and by the people) rather than depend on the judiciary to do that job. No power of Congress is more fundamental and more essential to an independent, coequal legislative branch than the power of the purse.

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[1] Report to the President and the Secretary of Defense on the Department of Defense by the Blue Ribbon Defense Panel 33 (July 1, 1970); S. Prt. No. 86, 99th Cong., 1st Sess. 5 (1985).

PREPARED STATEMENT OF ALLEN SCHICK

Mr. Chairman, I should begin my statement by expressing pleasure at the opportunity to testify on line-item veto legislation. But neither of the pending measures is truly a line-item veto bill. As recently as last year, S. 4 would have been labeled "enhanced rescission authority" and S. 14 would have been labeled "expedited rescission authority." Now, because of political expedience, these measures have been renamed line-item veto bills.

Mr. Chairman, this is not just a matter of labels. S. 4, which is the more powerful measure, is not a line-item veto in either procedure or result. A chief executive who exercises a line-item veto must disapprove legislation to get his way; S. 4, however, provides for the president to cancel legislation after signing it into law. In a line-item veto, the legislative branch would prevail if it disapproved the chief executive's veto; under S. 4, however, Congress would lose even if it disapproved the president's action. S. 4 might as well be labeled "The President Always Wins" bill.

In more than 30 years of working on government budgets, I have never encountered a bill that is so ill advised and so constitutionally defective. S. 4 is defective, perhaps not in the legal sense—the courts may decide that—but certainly in the political sense, for it would fundamentally change the constitutional arrangement for how laws are made and unmade, and it would strip much of the power of the purse from Congress.

Fortunately, the Committee and the Senate have an alternative to S. 4. I urge the Committee to give serious, bipartisan consideration to S. 14. This bill would strengthen the Impoundment Control Act of 1974 while preserving the constitutional roles of the president and Congress in making laws.

S. 4 would give the President more power than any governor has. Proponents of S. 4 argue that it would give the president the same veto power as the governors of 43 states now have. In fact, S. 4 would go well beyond the item veto power of governors. In most states, the governor must either veto or sign an item of expenditure; S. 4, by contrast, would allow the president to eliminate or reduce any item. In contrast to a true line-item veto, S. 4 would empower the president to nullify report language, not just the text of legislation. The president would even be able to disapprove matters that are not itemized in either legislation or committee reports. Thus the president would enjoy virtually unfettered power in deciding how much would be spent and what the money would be spent on.

This power would not be limited to appropriations bills; it would also extend to substantive laws, such as entitlement legislation or other direct spending. It would not be limited to new laws, but could also reach to laws passed decades ago. In fact, it could even reach to permanent appropriations financed by trust funds. As reported by the Budget Committee, S. 4 would empower the president to "rescind all or part of any budget authority." This broad power would go well beyond the one-third of the budget that is spent on discretionary programs. It would enable the president to cancel budget authority provided for medicare, medicaid, social security, or any other entitlement. I cannot think of a single dollar of Federal spending that would be beyond the rescission power that the president would have under S. 4.

Of course, the president only would be able to rescind the money but not the legal right to the money. This would only make matters worse. If the president were to rescind medicare or social security funds, participants in these programs would still be entitled to the same payments as before, but there might not be money to pay them. S. 4 opens up a scary possibility of Americans having rights without remedies. No governor can wield an item veto to nullify rights under existing law, and neither should the president.

S. 4 would debilitate Congress' constitutional power of the purse. The main impact of S. 4 would likely be on the governmental powers of the President and Congress. This misguided legislation would permit the president to effectively cancel laws passed by Congress. True, Congress could override a presidential rescission, but it would take three sets of votes for Congress to prevail in a budgetary dispute. First, Congress would have to appropriate the funds; second, Congress would have to pass a "rescission disapproval bill"; third, Congress would have to disapprove the president's disapproval of the rescission disapproval bill. Each of these three sets of votes might entail House, Senate, and conference action. If Congress failed to act within the tight deadlines set by S. 4, the president would win by default. He also would win if the conferees failed to meet or if one-third plus one of the members of each chamber backed him.

How can the president cancel laws passed by Congress? The answer is that he cannot, but S. 4 skirts this messy question by stating that rescinded funds "shall be deemed canceled" unless a rescission disapproval bill is enacted into law. This

is not the first time that the questionable "deemed" procedure has been used to get around constitutional niceties. The House uses this procedure to avoid voting directly on debt limit bills. In the past, the Senate stood firm against pretending that laws were passed when they were not. It should stand firm again.

S. 4 not only requires Congress to vote three times to get its way, it also bars the House and Senate from approving part of a rescission. Congress would either have to disapprove the entire rescission or refrain from acting. This provision makes no sense whatsoever. A rescission disapproval bill would not be a legislative veto; it would be a bill passed by both the House and Senate and, like any other bill passed by Congress, both chambers should have a right to decide what is in the laws they produce.

Moreover, S. 4 would bar floor amendments to a rescission disapproval bill unless permitted by an extraordinary three-fifths majority. I do not understand why normal legislative procedures would not be applied to House or Senate consideration of this type of measure.

The defects of S. 4 highlight the extreme imbalance in this legislation. The president would have the option of rescinding all or part of an appropriation; Congress would be faced with an all-or-nothing choice. The president would win if Congress did nothing; he even would win if Congress disapproved the rescission but was unable to muster a two-thirds majority the third time it voted on the issue.

S. 4 would do little to reduce Federal spending. The shift in budgetary power from Congress to the president endorsed by S. 4 derives from a simple but erroneous notion: that Capitol Hill—not the White House—is responsible for the huge deficits that have plagued the Federal budget since the early 1980s. To be sure, there is enough blame to go around, but a fair accounting would assign the lion's share of responsibility to a succession of presidents who have asked Congress to appropriate funds for their favored programs. One president wants more for defense, another more for education. Some presidents have favored scientific research and technology; others have sought more for job training or community development. Presidential priorities differ, but the common element is that presidents want national programs with hefty price tags. Congress, by contrast, specializes in earmarked spending—the kind that often is labeled "pork." I will not defend this type of spending, but it is much less costly to earmark spending for a project in a particular state or district than to spread the funds nationwide.

One of the arguments in favor of a line-item veto is that it would uphold broad, general interests at the expense of narrow interests. The evidence is overwhelming that the Federal Government spends so much because almost all of the budget is devoted to the broad, national programs favored by advocates of the line-item veto. The big spending items are national programs—which is why they cost so much. Social Security is national, medicare and medicaid are national, almost all of defense is national, and so on. Lawrence Welk's birthplace was a localized project, but at $500,000, it made a much bigger dent in newspaper headlines than in the Federal budget.

I am not a defender of pork—my mother in Brooklyn, New York, would be pleased to know that I have never touched it—but pork is not what has imbalanced the Federal budget. In our zeal to eradicate the deficit, we should not go whole hog and give the president pig-in-the-poke powers.

Although S. 4 would not do much to curtail Federal spending, it would ensure that the president got his way whenever Congress got in the way. It would be difficult for Congress to restore spending cut by the president, even if the impact on the deficit was negligible.

S. 14 would permit a more balanced relationship between the President and Congress. Unlike S. 4, which would enable the president to rescind funds, S. 14 would permit the rescission of duly appropriated funds only by vote of Congress. In my view, the arrangement established in the Impoundment Control Act is inadequate. Under that act, when the president proposes a rescission, he must release the funds if Congress fails to pass a rescission bill within 45 days of continuous session. This provision gives Congress a strong incentive to do nothing.

Legislative inaction should not be the means by which Congress responds to proposed rescissions. Congress should be required to vote on the matter, according to the expedited procedures set forth in S. 14. In fact, I would expand fast track procedures to all rescissions, not only to those proposed shortly after Congress has appropriated funds. Expedited rescission authority should be seen as an appropriate means of reducing Federal spending, not just as a "porkbuster." Accordingly, the president should be empowered to propose an expedited rescission when he submits the budget for the next fiscal year or when he finds that fiscal or other circumstances warrant spending cutbacks.

S. 14 would be limited to discretionary spending; it would not permit the rescission of entitlement funds or other mandatory programs. It thus rules out S. 4's threat to social security and other entitlements.

Unlike S. 4, S. 14 would permit the rescission of targeted tax benefits. While one might argue that the "100 beneficiaries" threshold is too high or too low, it would be imprudent to extend rescission authority to general tax expenditures. General tax expenditures have the same characteristics as entitlements—and they should be treated the same way.

I have one quibble with S. 14, which might be considered in markup. As reported by the Budget Committee, the bill would permit floor motions to strike particular rescissions. It would not, however, permit motions to reduce the amount to be rescinded. I believe that enabling Congress to reduce the amount rescinded would foster a more cooperative relationship between the two branches. To the extent feasible, congressional action on rescissions should follow regular procedures. Congress should not be boxed into an all-or-nothing predicament on proposed rescissions.

Mr. Chairman, the Committee is fortunate to have two different rescission bills under consideration. One would enhance presidential power, the other would expedite congressional action. One would work within the framework of the Constitution, the other seeks to evade the Constitution. One would uphold Congress' proper role in the appropriation of funds, the other would vitiate that role. The easy choice for this Committee would be to report both S. 4 and S. 14 without favoring one or the other. I hope the Committee will recognize that the only bill that warrants its approbation is the one predicated on the principle that an appropriation of funds can be rescinded only by a law duly passed by Congress and enacted into law.

THE WHITE HOUSE
Washington

HON. GILBERT S. MERRITT
Chief Judge, United States Court of Appeals for the Sixth Circuit, Nashville, TN 37203

DEAR GIL: I am responding to your letter of January 13, 1995 requesting the Administration's assistance for the position that the judiciary should be excluded from the President's line item veto power that Congress is currently considering. I spoke to Alice Rivlin about this issue, and she has agreed that the Administration should support your position. This issue did not come up in her testimony before the Senate Budget Committee last week, but she has indicated that she will make the Administration's view known to Congress when the opportunity arises. I am please that we have agreement on this issue.

Sincerely,

ABNER J. MIKVA,
Counsel to the President

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, DC, February 17, 1995

HON. WILLIAM V. ROTH
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, DC

DEAR MR. CHAIRMAN: I enjoyed the opportunity to appear before the Senate Committee on Governmental Affairs, January 12, 1995, to discuss the line item veto. You submitted several follow-up questions to my testimony, to be included in the printed record of the hearing. By way of this letter, I am responding to those questions.

Again, thank you for the opportunity to appear before the Committee to discuss the line item veto.

Sincerely,

ALICE M. RIVLIN,
Director.

Enclosure

QUESTIONS ON TAX EXPENDITURES

Question 1. Ms. Rivlin, under the Congressional Budget and Impoundment Control Act of 1974, "tax expenditures" are defined as reductions in individual and corporate income tax liabilities that result from special tax provisions or regulations that provide tax benefits to particular taxpayers. These special tax provisions can take the form of exclusions, credits, deductions, preferential tax rates, or deferrals of tax liability. Could you tell me, would the "personal exemption" be a "tax expenditure?" Would the "standard deduction" be a tax expenditure? What about a reduction in tax rates, when would that be a tax expenditure? How about the earned income tax credit?

This definition says "income taxes." What about excise taxes? For example, there is an exclusion from certain excise taxes on alcohol under some conditions. Are those tax expenditures? Should they be?

Do you think that you and I would agree on everything that might, or might not be a "tax expenditure" under this definition? The Joint Committee on Taxation currently publishes an annual report on Federal tax expenditures. It states that the Committee uses its "judgment" in distinguishing between those income tax provisions that can be viewed as a part of "normal tax law" and those special provisions that result in "tax expenditures." Whose judgment should we rely on in determining what a "tax expenditure" is, if such expenditures are to be subject to the line item veto?

Answer. To fulfill the requirements of the 1974 Budget Act to produce a list of tax expenditures, Treasury and the Joint Committee on Taxation (JCT) have each produced a working definition of the term "tax expenditure". These definitions have been modified over time as changes in tax law have forced both Agencies to reconsider treatment of particular provisions and to determine which new provisions should be classified as tax expenditures. Although Treasury and the JCT have exercised judgement in developing and refining these definitions, they have done so within the relatively narrow confines of the Budget Act.

These definitions were developed to produce lists that are used strictly for informational purposes and do not affect Federal policy directly. If Congress enacts legislation to allow line-item veto of tax expenditures, it should consider carefully what refinements in the definition of the term tax expenditure it should develop for purposes of allowing a line-item veto.

The personal exemption, standard deduction, and tax rate schedule have never been considered tax expenditures, because they apply uniformly to all taxpayers. (The graduated nature of the rate schedule has not been considered a tax expenditure because it is affected only by the generic condition of the taxpayer's income, not by any particular situation of the taxpayer.) The earned income tax credit is considered a tax expenditure, because it is available only to taxpayers who receive income from labor and meet certain family composition requirements at the same time.

The law defines tax expenditures with reference to the income tax. While they have no legal standing, there have been scholarly efforts to apply the legal definition to other taxes. There certainly are provisions of other taxes that do provide narrowly defined tax relief.

Perhaps because the tax expenditure concept has been used only for informational purposes thus far, there has never been a need to determine whose judgment would

take precedence. Because of the specificity of the law, the JCT and Treasury lists are quite similar, although they do differ in several significant ways.

Question 2. As you know, the President has said for some time that he would like to have the line item veto. If the President is given the authority to line item veto "tax expenditures" then that will mean that he can use this new power to stop tax reductions from becoming law. However, he would not be able to stop tax increases from becoming law under this authority. This will create a "bias" toward tax increases in the law. Does the President support a bias in the law to increase taxes? Do you think he intended to include in the line item veto the authority to increase taxes that Congress has chosen to reduce? Do you think the President should have the authority to line item veto tax increases, as well as tax expenditures?

Answer. The line-item veto proposals under consideration by the Congress would give the President the authority to reduce spending, but not to increase spending. Thus, if the President had the authority to prevent tax reductions but not tax increases, there would be a logical symmetry; the law would allow the President to take only those actions that would reduce the deficit, and thus would create a "bias" toward deficit reduction. Presumably, that "bias" is intended by virtually all advocates of the line-item veto. The President has said that he would prefer a broad line-item veto provision. The line-item veto has always been associated with reducing the deficit, not with a general power of the President to item-veto any provisions in whatever law he might choose. Whether the President should have such a broader authority raises wholly different questions.

Question 3. I believe that most Americans-think that great scrutiny should be given to how their precious tax dollars are spent. I believe that is why most Americans support extending the line-item veto to the President for spending bills. The public is especially outraged at some parochial spending by powerful members of Congress in their own states and districts, that may not truly be worthy under close scrutiny.

I am also aware of some cases where special tax benefits have been given to a few taxpayers, however, this practice has largely come to an end. Perhaps some very targeted tax benefits are not worthy of becoming law, and the President should be able to veto them. However, if the Congress were to enact a capital gains reduction, or pass individual retirement accounts, I do not think the, public will feel the President should be able to block those reductions in their taxes. Do you think that there is a difference in the taxpayers' view between the right of the President to stop unnecessary spending, and the right of the President to stop tax cuts from becoming law?

Answer. It is likely that some people would oppose targeted spending projects which benefit other States or districts. It is also likely, however, that many people would want to protect targeted spending projects in their States or districts—and would see those projects as constructive and worthy of Federal support. That is why such projects are undertaken in the first place. The point of a line-item veto is to put in place a hurdle—not an iron-clad barrier—that such projects must cross.

The public reaction to targeted tax benefits is probably similar. People like tax cuts that benefit them, but tax cutting that benefits only others is often a different matter. A line-item veto puts in place a hurdle—not an iron-clad barrier—that tax cuts must cross. If such proposals have strong support in the Congress, they will become law, regardless of the line-item veto—or the current veto power, for that matter.

Question 4. Before the 1974 Budget Act, there were impoundment rights held by the President that had some similarities to the line item veto. These rights did not extend to "tax expenditures." Can you tell me why not? Do you think tax expenditures should be included in any line item veto? If so, why? If not, why not?

Answer. Any conclusions on the impoundment rights of the President prior to the 1974 Budget Act would be speculative in the extreme, because that power—even with respect to spending—was subject to numerous court cases and has never finally been resolved. The Administration's position is that the President should have a broad line-item veto authority, to help to reduce the budget deficit.

Question 5. Under the "tax expenditure" definition from the 1974 Budget Act, it states that a tax expenditure is a "revenue loss . . . resulting for special exclusions, exemptions or deductions from gross income." The assumption here seems to be that we do not have a perfect income tax because Congress has determined through public policy to reduce the people's tax burden.

My question is, if a tax expenditure requires a "revenue loss," who is going to be the keeper of the "revenue loss" scoreboard? For example, I would argue that although enacting the President's IRA plan may reduce income tax liability for millions of taxpayers, over time it will result in more growth, a higher rate of savings

and productivity and a better standard of living—ultimately giving the government more revenue not less. What happens if the Congressional Budget Office decides that a reduction in capital gains taxes results in increased revenue for the government, but the Office of Management and Budget says it loses revenue? Can the President veto the capital gains tax cut under Senator Domenici's bill? What about the luxury tax. If President Bush had decided that tax resulted in less, and not more revenue for the Federal Government, under Senator Domenici's bill could he have vetoed that provision? Are you willing to give all future Presidents the authority to veto tax expenditures, as well as be the scorekeeper on all of these decisions?

Answer. I would take issue with your description of the assumption behind the tax expenditure concept. Designation of a legal provision as a tax expenditure does not assume ". . . that we do not have a perfect income tax because Congress has determined through public policy to reduce the people's tax burden." Tax expenditures are not assumed to be bad, nor does the concept assume that the Federal Government has first claim on all of the taxpayers' income. The identification of a tax expenditure merely indicates that it allows some taxpayers to pay less tax than others with equal incomes because of some particular condition—such as the sources of their income (e.g., the earned income tax credit) or the uses to which they put their income (e.g., charitable contributions). The longevity of the earned income tax credit and the deduction for charitable contributions is a clear indication that those provisions are widely accepted as appropriate, even though they are designated as tax expenditures.

Basically, the question of who would decide whether a particular tax provision would be subject to a line-item veto would be answered by the law that the Congress chooses to pass. Under the Supreme Court's decision in *Bowsher* v. *Synar*, on the original Gramm-Rudman law, the President, rather than the Congress, would be the scorekeeper.

Question 6. Under the rules adopted by the Joint Tax Committee for determining what a "tax expenditure" is, it is said that they use their "judgment" to determine what a "normal" income tax is. But what if the baseline is already flawed? For example, some economists look to the "tax expenditure" cost of an IRA but ignore the fact that it operates to neutralize the tax code's bias against savings. So, if you isolate the IRA you may think it is a tax expenditure, but if you look at the big picture, you may decide that policymakers should first look to the bias already in the system. To do otherwise could doom very good ideas, including the IRA and even Senator Domenici's idea for exempting savings from the tax law.

Answer. The current tax expenditure definition was made in reference to our current income tax, not a hypothetical consumption tax. Under the income tax, income from capital is subject to tax; under a consumption tax, it is not. Therefore, provisions to reduce the tax on income from capital do fit under the definition of tax expenditures under our current tax system.

With reference to policy choices, however, the scoring requirement for provisions such as the IRA or Senator Nunn and Senator Domenici's expenditure tax is in complete harmony with the purpose of deficit reduction. Budget deficits hurt growth because they reduce national savings, which is the resource from which business can invest. The objective of the Administration's IRA proposal and the Nunn-Domenici expenditure tax is to increase national saving in the long run. However, if either proposal were enacted in a fashion that reduced national saving in the short run, before they had their ultimate effect, they would defeat their own purpose. Thus, requiring that such policies be fully paid for within the budget window, rather than allowing highly speculative estimates of very-long-term benefits to be dissipated in the near term, is essential for these policies to achieve their own goals.

Finally, in a policy-making sense, the scorekeeping rules do not "doom" these proposals; they merely require that they be paid for.

QUESTIONS FOR HON. ALICE RIVLIN FROM SENATOR GLENN

1. I understand that OMB currently analyzes each appropriations bill received from the Congress and advises the President on the merits of the various spending proposals in the bill.

—Given your experience with this process, how frequently do you believe the line item veto would have been used during the last budget year? What kind of savings would have been realized?

2. If the Administration were to fashion its own rescission reform bill, what would it look like?

—Do you favor the enhanced rescission approach as applied under S. 4 or the expedited rescission approach of S. 14?
—Should rescission powers be applied to tax expenditures? If so, how broad should those powers be?
—How would you propose to define "targeted tax benefits" under S. 14?
—Should rescission powers be applied to entitlements? If so, how broad should those powers be?
—Do you favor sunsetting the new rescission authority as called for in S. 14?
—Does the Administration feel that any special protections are needed for the Judiciary?

3. As you know, H.R. 2 provides for an enhanced rescission of tax benefits targeted to five or fewer taxpayers. Given the limited reach of this power, would there even have been an opportunity to rescind any tax expenditures from the 1990 or 1993 deficit reduction bills? Do you feel this proposal would have any practical effect?

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, DC, February 17, 1995

HON. JOHN GLENN
Ranking Member, Committee on Governmental Affairs, U.S. Senate, Washington, DC

DEAR SENATOR GLENN: I am pleased to respond to your question regarding the Administration's position on the line-item veto.

You asked whether the Administration favors the enhanced rescission approach as applied under S. 4 or the expedited rescission approach of S. 14. As I have testified, the Administration generally favors legislation which would enhance the President's ability to eliminate wasteful spending, but prefers the stronger approach which permits rescissions to take effect, absent congressional disapproval.

The Administration favors a broad application of the rescission power. As was noted at the Committee's hearing, there are procedural and legal complexities—particularly with regard to tax expenditures and direct spending—and I offer the technical expertise of OMB staff as you consider these issues.

With regard to tax expenditures, you asked how the Administration would propose to define "targeted tax benefits" and whether the H.R. 2 limitation to "five or fewer" taxpayers would have any practical effect. The Administration has not proposed a specific definition for targeted tax benefits, but favors a definition that would cover the range of special interest tax legislation. The House Floor amendment to H.R. 2, which broadened the definition of targeted tax benefits to "100 or fewer" taxpayers, was a marginal improvement over the committee reported version, but the Administration would prefer broader coverage of tax expenditures.

You asked for the Administration's position on sunsetting the new rescission power. The Administration prefers a permanent enactment of the new authority.

Finally, you asked how frequently the item veto power might have been used had it been available during the last budget year. Each appropriation bill, and each major tax bill of recent years has contained provisions that would have been subject to this new authority. Since the line-item veto authority did not exist, the Administration was limited to signing these measures or vetoing entire bills. Had the line-item veto authority been in effect, the President would have been able to narrowly focus a veto on the special interest provisions.

Sincerely,

ALICE M. RIVLIN,
Director.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, DC, February 17, 1995

HON. WILLIAM V. ROTH
Chairman, Committee on Governmental Affairs, U.S. Senate, Washington, DC

DEAR MR. CHAIRMAN: I am pleased to respond, for the record, to questions submitted by Senator Glenn, regarding the Administration's position on the line-item veto.

Senator Glenn asked whether the Administration favors the enhanced rescission approach as applied under S. 4 or the expedited rescission approach of S. 14. As I have testified, the Administration generally favors legislation which would enhance the President's ability to eliminate wasteful spending, but prefers the strong-

er approach which permits rescissions to take effect, absent congressional disapproval.

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Sincerely,

ALICE M. RIVLIN,
Director.

QUESTIONS FOR DAVID KEATING, EXECUTIVE VICE PRESIDENT, NATIONAL TAXPAYERS UNION

1. Given your experience in analyzing Congressional spending, what level of savings do you believe could be realized through enactment of an enhanced or expedited rescission?

2. What are the reasons for your opposition to item veto power over tax legislation?

—Could you please expand on your views regarding the constitutionality of item veto power over tax legislation?

U.S. DEPARTMENT OF JUSTICE
OFFICE OF LEGAL COUNSEL
Washington, DC., July 8, 1988

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: THE PRESIDENT'S VETO POWER

In the past few months, several commentators have suggested that Article I of the Constitution vests the President with an inherent item veto power. According to these commentators, this power is supported by the text of the Constitution, the experience in the Colonies and the States prior to the adoption of the Constitution, and other relevant constitutional materials. In our view, the text of Article I requires that any analysis of this question focus on the meaning of the term "Bill." If this term was intended to mean a legislative measure limited to one item of appropriation or to one subject, then it may be argued that the President properly may consider measures containing more than one such item or subject as more than one "Bill" and, therefore, may approve or disapprove of each separately. Under this approach, the President would have the functional equivalent of an item veto. Our review, however, of the relevant constitutional materials persuades us that there is no constitutional requirement that a "Bill" must be limited to one subject. The text and structure of Article I weigh heavily against any such conclusion. Moreover, historically "Bills" have been made by Congress to include more than one item or subject, and no President has viewed such instruments as constituting more than one bill for purposes of the veto. Indeed, the Framers foresaw the possibility that Congress might employ "the practice of tacking foreign matter to money bills," but gave

no indication that this practice was inconsistent with their understanding of the term "Bill." Nor, we are constrained to conclude, does the recent commentary on this question provide persuasive support for an inherent item veto power in the President.

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B. IMPOUNDMENT

The commentators also suggest that the President's historical exercise of impoundment authority was unchecked until enactment of the Impoundment Control Act of 1974, and, therefore, that past Presidents' failure to exercise item veto authority is explained, not by the absence of such authority, but by their reliance on the somewhat narrower, but more effective, power of impoundment.[48] This argument, however, provides no affirmative support for inherent item veto authority. Rather, at most, it partially rebuts any negative inference to be drawn from the fact that no President has ever asserted or exercised inherent item veto power. Indeed, since impoundment relates only to appropriations, the availability of impoundment does not explain why no President in 200 years has exercised an item veto with respect to non-appropriation matters.

Moreover, to the extent that the commentators are suggesting that the President has inherent, constitutional power to impound funds, the weight of authority is against such a broad power in the face of an express congressional directive to spend.[49] This Office has long held that the "existence of such a broad power is supported by neither reason nor precedent."[50] Virtually all commentators have reached the same conclusion, without reference to their views as to the scope of executive power.[51]

There is no textual source in the Constitution for any inherent authority to impound. It has been argued that the President has such authority because the specific decision whether or not to spend appropriated funds constitutes the execution of the laws, and article II, section 1 of the Constitution vests the "executive Power" in the President alone. The execution of any law, however, is by definition an executive function, and it seems an "anomalous proposition" that because the President is charged with the execution of the laws he may also disregard the direction of Congress and decline to execute them.[52] Similarly, reliance upon the President's obligation to "take Care that the Laws be faithfully executed," article II, section 3, to give the President the authority to impound funds in order to protect the national fisc, creates the anomalous result that the President would be declining to execute the laws under the claim of faithfully executing them.[53] Moreover, if accepted, arguments in favor of an inherent impoundment power, carried to their logical conclusion, would render congressional directions to spend merely advisory.

In addition, because an inherent impoundment power, as indicated above, would not be subject to the limitations on the veto power contained in article I, clause 7,

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[48] The impoundment power is narrower than item veto authority because the former has no application beyond appropriations. The impoundment power is more effective because it is not subject to override.

[49] As discussed below, the President may in some instances decline to spend funds appropriated by Congress in the absence of an express directive to spend. In such cases, however, the President is not exercising an inherent impoundment power, but rather his discretion to direct the manner of executing a law in the absence of a specific congressional mandate.

[50] Memorandum by Assistant Attorney General William H. Rehnquist, re Presidential Authority to Impound Funds Appropriated for Assistance to Federally Impacted Schools, December 1, 1969, at p. 8 (hereafter "Rehnquist Memorandum"); see also Memorandum to Clark MacGregor, Counsel to the President, from Ralph E. Erickson, Acting Assistant Attorney General, re Constitutional Power of Congress to Compel Spending of Impounded Funds, January 7, 1972; Memorandum to the Attorney General, from Ralph W. Tarr, Acting Assistant Attorney General, re Legal Authority to Take Action to Forestall a Default, October 21, 1985.

[51] *E.g.,* Neuren, *Addressing the Resurgence of Presidential Budgetmaking Initiative,* 63 Tex. L. Rev. 693 (1984); Harner, *Presidential Power to Impound Appropriations for Defense and Foreign Relations,* 5 Harv. J. Law & Pub. Pol. 131 (1982); Note, *Impoundment of Funds,* 86 Harv. L. Rev. 1505 (1973); Note, *Protecting the Fisc: Executive Impoundment and Congressional Power,* 82 Yale L.J. 1636 (1973).

A contrary view was expressed by Deputy Attorney General Sneed in a statement before the Senate Subcommittee on Separation of Powers, February 6, 1973. Mr. Sneed stated that the Constitution's grant of "executive power" to the President gave the President the power and responsibility to administer the national budget and protect the public fisc, and that accordingly the President had the power to impound funds the expenditure of which would threaten fiscal stability. For the reasons set forth herein, we disagree with that view.

[52] Rehnquist Memorandum at p. 11; Note, *Protecting the Fisc: Executive Impoundment and Congressional Power,* 82 Yale L.J. 1636, 1640 (1973).

[53] Rehnquist Memorandum at p. 11.

an impoundment would in effect be a "superveto" with respect to all appropriations measures. The inconsistency between such an impoundment power and the textual limits on the veto power further suggests that no inherent impoundment power can be discovered in the Constitution.[54]

Nor has an inherent power to impound been recognized by the courts. Although we are aware of no Supreme Court cases directly on point, *Kendall* v. *United States*, 37 U.S. 524 (1838), can be read to support the proposition that the Executive's duty faithfully to execute the laws requires it to spend funds at the direction of Congress. Further, one lower court, in a decision arising out of the Nixon impoundment controversy, held that at least with respect to the programs before it, the President had no inherent constitutional authority to impound funds in the face of a congressional directive to spend. *National Council of Community Mental Health Centers, Inc.* v. *Weinberger*, 361 F. Supp. 897, 900–902 (D.D.C. 1973).[55] See also *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America* v. *Donovan*, 746 F.2d 855, 863 (D.C. Cir. 1984) (noting that several courts had rejected either explicitly or implicitly the existence of "inherent constitutional power to decline to spend in the face of a clear statutory intent and directive to do so"), *cert. denied*, 474 U.S. 825 (1985); *State Highway Commission* v. *Volpe*, 479 F.2d 1099, 1106 (8th Cir. 1973) (concession by government that congressional directive to spend must be followed).[56]

We recognize, of course, that Presidents have historically impounded funds, starting at least with Thomas Jefferson.[57] Although we have not independently reviewed the circumstances surrounding each such incident, it appears that of those impoundments not based upon the President's foreign policy powers, most occurred under statutes that did not contain a directive to spend, thereby permitting the President to impound in the face of congressional silence. *Cf. Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring).[58] Determining whether a statute contains or reflects a congressional directive to spend is a complex question of statutory construction, to be determined on a case-by-case basis.[59]

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[54] Note, *Impoundment of Funds*, 86 Harv. L. Rev. 1505, 1514 (1973).

[55] In several other cases, although the issue was not always clearly presented, the courts implicitly found that the President has no inherent impoundment authority. *E.g., Train* v. *City of New York*, 420 U.S. 35 (1975); *City of Los Angeles* v. *Adams*, 556 F.2d 40 (D.C. Cir. 1977); *Sioux Valley Empire Electric Association* v. *Butz*, 504 F.2d 168 (8th Cir. 1974).

[56] Although the President has no general inherent authority to impound funds, we believe that there may be instances in which he may impound even in the face of a congressional mandate to spend. For example, Congress does not have the power to compel the spending of funds for an unconstitutional purpose or in violation of specific provisions of the Constitution. Accordingly, the President may impound funds where to spend such funds would infringe upon his constitutional responsibilities as Commander-in-Chief or his duties in the area of foreign affairs.

Moreover, when a Congressional directive to spend conflicts with another congressional directive not to spend—as, for -example, where Congress has established, a debt ceiling that would be violated if the expenditure were made—the President must determine which statute controls in accordance with ordinary principles of statutory construction and, accordingly, in making, that determination may conclude that appropriated funds not be spent. See Memorandum to the Attorney General, from Ralph W. Tarr, Acting Assistant Attorney General, re Legal Authority to Take Action to Forestall a Default, October 21, 1985.

[57] Note, *Protecting the Fisc: Executive Impoundment and Congressional Power*, 82 Yale L.J. 1636, 1644 (1973).

[58] See also Note, *Impoundment of Funds*, 86 Harv. L. Rev. 1505, 1507–1508, 1510 (1973). As noted above, however, in such a case the President is not exercising an inherent impoundment power, but his discretion in the execution of the laws in the absence of a specific congressional mandate.

[59] *E.g.*, 42 op. A.G. 347 (1967); Note, *Protecting the Fisc: Executive Impoundment and Congressional Power*, 82 Yale L.J. 1636, 1645–53 (1973).

The adoption of the Impoundment Control Act of 1974, however, may make it doubtful that the President retains some residual authority to impound funds when a statute does not mandate spending.

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